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STATEMENT OF INFORMATION

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE
ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT
GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO
EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

BOOK IX—PART 2

WATERGATE SPECIAL PROSECUTORS
JUDICIARY COMMITTEE'S IMPEACHMENT INQUIRY

April 30, 1973–July 1, 1974



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 THOMAS BELL, *Counsel*
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STATEMENT OF INFORMATION

WATERGATE SPECIAL PROSECUTORS

JUDICIARY COMMITTEE'S IMPEACHMENT INQUIRY

April 30, 1973 - July 1, 1974

Part 2

46. On August 29, 1973 Judge Sirica issued an order requiring the President to turn over the recordings sought by the July 23, 1973 subpoena for in camera review by the Court. On September 6, 1973 the White House filed a petition for a writ of mandamus in the United States Court of Appeals for the District of Columbia Circuit requesting that an order be entered directing Judge Sirica to vacate his order.

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47. In September 1973 the Special Prosecutor's office received the Political Matters Memoranda file kept by Strachan that had been requested on July 10, 1973 and that the President had agreed to furnish to the Special Prosecutor in his letter to Judge Sirica of July 25, 1973. Cox has testified that Buzhardt wanted to go through the file before turning it over and Cox agreed so long as he got to see the entire file.

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48. On September 24, 1973 Cox told Richardson that an effort was being made to place White House documents out of his reach by removing materials or files thought to be the subject of a subpoena and placing such materials or files among the Presidential papers. Special Assistant to the President Patrick Buchanan has testified that prior to his appearance before the SSC on September 26, 1973 and the Grand Jury on September 27, 1973, White House counsel instructed him to take his 1971 and 1972 files to the basement of the Executive Office Building. Buchanan has also testified that he always thought that such papers were Presidential papers.

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49. On Friday, September 28, 1973 the President decided to review the contents of the tapes which the Grand Jury and the Senate Select Committee had subpoenaed July 23, 1973 and directed General Haig to make the arrangements for such review commencing the following day at Camp David. The President asked his private secretary, Rose Mary Woods, to go to Camp David and to transcribe the contents of the subpoenaed tapes. Special Assistant to the President Stephen Bull was instructed to accompany Woods and to cue the tapes to particular conversations for her.

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50. On September 29, 1973 Rose Mary Woods and Stephen Bull took between eight and twelve tapes and three Sony tape recorders to Camp David. Haig has testified that on September 29, 1973 he telephoned Bull at Camp David and that Bull stated that he was having difficulty matching up conversations on the reel with the first item on the subpoena. Haig has testified that he then telephoned Buzhardt who informed Haig that only the conversation between the President and Ehrlichman was demanded by the subpoena of the June 20, 1972 EOB tape and that the subpoena did not include the conversation between the President and Haldeman. Haig has testified that at approximately 10:10 a.m. he telephoned Rose Mary Woods and told her that the President's conversation with Haldeman was not included in the subpoena. Woods typed this information on a note to Bull.

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51. Woods has testified that during the weekend of September 29-30, 1973 she spent twenty-nine hours transcribing the June 20 EOB tape, but that she was unable to complete the tape. She has also testified that while she was transcribing the tape the President came into the cabin where she was working and listened to a portion of the tape for five to ten minutes, that he pushed the buttons on her recorder back and forth manipulating the tape and that he commented that he heard two or three voices. Bull has testified that he was unable to find recordings of the President's June 20, 1972 telephone conversation with Mitchell or his April 15, 1973 meeting with Dean and that he discussed this with the President and Woods while they were at Camp David.

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52. On October 1, 1973 Woods continued work on the transcription of the June 20, 1972 EOB tape at her office in the White House. During the day she began to transcribe from a new Uher 5000 recorder that had been purchased that day by the Secret Service for her use. Woods testified on November 8, 1973 that she took every possible precaution not to erase any part of the tape. After the existence of the gap in the tape was disclosed on or about November 21, 1973, Woods testified on November 26, 1973 that part of the recording may have been erased while she was talking on the telephone and that shortly after she had discovered the gap on October 1, 1973 she had reported to the President that a gap of approximately 5-1/2 minutes existed on the tape and that she had made a terrible mistake. Woods also testified that the President had told her the gap was no problem because he had been informed by his counsel that the June 20th Haldeman conversation had not been subpoenaed.

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53. On October 4, 1973 Bull and Woods accompanied the President to Key Biscayne. They took with them several tapes, including the June 20th EOB tape, and the Uher 5000 tape recorder. The tapes and the recorder were kept in a safe in the villa occupied by Woods. The Secret Service maintained a log showing who opened and closed the safe that contained the tapes, the tape recorder, and other envelopes. According to that log access to the safe was limited to Bull and Woods who opened and closed the safe on several occasions during the three day period the tapes were in it. Woods has testified that the June 20 tape was neither removed from the safe in Key Biscayne nor played during the October 4 weekend.

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53.4 Access log for Key Biscayne safe, October 4-7, 1973, Exhibit 167, <u>In re Grand Jury</u> , Misc. 47-73.....	731

54. Richardson has stated that in late September or early October 1973 he met with the President regarding the Agnew matter. Richardson has stated that the President said that now that they had disposed of that matter, they could go ahead and get rid of Cox.

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55. On October 11, 1973 Special Prosecutor Cox filed an indictment against Egil Krogh charging him with making false declarations before the District of Columbia Grand Jury. The indictment charged that Krogh had given false answers when questioned about his knowledge of E. Howard Hunt's and Gordon Liddy's travels to California for the White House.

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56. On October 12, 1973 the United States Court of Appeals for the District of Columbia Circuit ordered the President to turn over the recordings subpoenaed by the Grand Jury to Judge Sirica for an in camera inspection or to submit a statement setting forth any claim that certain material should not be disclosed because the subject matter related to national defense or foreign relations or was otherwise privileged. The Court stayed its order for five days to afford the President an opportunity to seek Supreme Court review.

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56.1 Judgement and Opinion, October 12, 1973, <u>Nixon v. Sirica</u> , 37-41.....	748

57. On October 15, 1973 Richardson met with Haig and other Presidential aides to discuss the tapes litigation between the Special Prosecutor and the White House. There was discussion of a proposal to produce a version of the tapes and then fire Cox. Richardson has testified that he said he would resign if such a proposal were carried out and according to Haig the proposal was dropped on that day. There was then discussion of the President's proposal to ask Senator John Stennis to listen to the tapes and verify the competence and accuracy of a record of all pertinent portions. Richardson agreed to seek to persuade Cox that the Stennis proposal was a reasonable way of dealing with the subpoenaed tapes. On the afternoon of the 15th, Richardson met with Cox and outlined to him the Stennis proposal. Richardson also suggested to Cox that the question of other tapes and documents not covered by the subpoena of July 23, 1973 be deferred.

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58. On October 17, 1973 Richardson submitted to Cox a written proposal for compromise that provided that the subpoenaed tapes would be made available to a third party verifier selected by the President. The verifier would be given a transcript that omitted continuous portions of substantial duration which clearly and in their entirety were not pertinent and would then prepare a verified transcript. The Special Prosecutor and counsel for the President would join in urging the Court to accept the verified record as a full and accurate record of all pertinent portions of the tapes. Richardson has stated that prior to submitting this document to Cox, he showed a draft to Buzhardt, and that at the urging of Buzhardt he deleted a paragraph of the proposal that stated it related only to the tapes covered by the subpoena. Richardson has stated that Buzhardt pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

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58.3 <u>Washington Post</u> , November 28, 1973, A1, A10.....	771

59. On October 18, 1973 Cox submitted to Richardson his comments on Richardson's proposed compromise, noting certain objections on particular points. Cox stated that the essential idea of providing for impartial but non-judicial means for providing the Special Prosecutor with an accurate version of the content of the tapes without his participation was not unacceptable. Richardson met with Haig and Wright at the White House and discussed Cox's comments. On the evening of October 18, Wright told Cox that four of his comments departed so far from Richardson's proposal that the White House could not accede to them in any form and that if Cox did not agree the White House would follow the course it deemed in the best interest of the country.

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60. On the night of October 18, 1973 Richardson prepared a summary of reasons why he thought he must resign. Richardson wrote that Cox had rejected a proposal which Richardson considered reasonable, but since he appointed Cox on the understanding that he would fire him only for "extraordinary improprieties," and since he could not find Cox guilty of any such improprieties, Richardson could not stay if Cox went.

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61. On October 19, 1973 Richardson met at the White House with Haig, Garment, Buzhardt and Wright. Richardson was shown a letter from Cox stating Cox's objection to a requirement that he could not subpoena other White House papers and tapes. Richardson has testified that he was surprised that Cox thought there was such a requirement and he suggested that another letter be sent to Cox making it clear that those were not the conditions of the proposal. On October 19, Wright wrote Cox clarifying two points in their prior correspondence and stating that further discussion seeking to resolve the matter by compromise would be futile.

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62. On October 19, 1973 the President wrote to Richardson instructing him to direct Cox to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations. That evening the President issued a press statement stating that Cox had rejected a proposal for compromise made by Richardson that would have included an understanding that there would be no further attempt by the Special Prosecutor to subpoena still more tapes or other Presidential papers of a similar nature.

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63. On October 19, 1973 John Dean pleaded guilty to a one-count information. charging conspiracy to obstruct justice. As part of the plea bargain, Dean agreed to cooperate with the Special Prosecutor.

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64. On October 20, 1973 Richardson wrote to the President. Richardson stated that he had regarded the proposal he submitted to Cox as reasonable, but that he had not believed that the price for access to the tapes in this manner would be the renunciation of any further attempt by him to resort to judicial process. Richardson stated that the proposal he had submitted to Cox did not purport to deal with other tapes, notes or memoranda of Presidential conversations, and that in the circumstances he would hope that some further accommodation could be found.

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65. On October 20, 1973 the President instructed Richardson to discharge Cox. Richardson told the President that he could not comply with this directive and submitted his resignation. Haig thereupon called Deputy Attorney General William Ruckelshaus and asked Ruckelshaus to fire Cox. Ruckelshaus refused to carry out the President's directive and resigned. Haig called Solicitor General Robert Bork. Bork went to the White House where he agreed to fire Cox and signed a letter discharging Cox. Later that night White House Press Secretary Ziegler announced that the President had abolished the office of the Watergate Special Prosecution Force.

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65.7 Ronald Ziegler remarks, October 20; 1973, 9 Presidential Documents 1271.....	825

66. On October 23, 1973 the President authorized his Special Counsel Wright to inform Judge Sirica that the subpoenaed tapes would be turned over to the court.

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66.1 Alexander Haig and Charles Alan Wright news conference, October 23, 1973, 9 Presidential Documents 1275, 1277-78.....	828
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67. On October 26, 1973 the President announced at a news conference that he had decided that Acting Attorney General Bork would appoint a new special prosecutor. The President said that it was time for those who were guilty to be prosecuted and those who were innocent to be cleared. The President stated that he would see that the new Special Prosecutor had the cooperation from the executive branch and the independence that he needed to bring about that conclusion. The President stated in response to a question that he had dismissed Cox when Cox rejected a proposal that Richardson and others had approved.

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67.1 President Nixon news conference, October 26, 1973,	
9 Presidential Documents 1287, 1289-90.....	832

68. On October 30, 1973 Buzhardt informed Judge Sirica that the subpoenaed recordings of the June 20, 1972 telephone conversation between the President and John Mitchell and the April 15, 1973 meeting between the President and Dean had never been made.

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68.1 Judge Sirica statement, October 31, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 2.....	836

69. On October 31, 1973 Leon Jaworski, who had been selected to be Special Prosecutor, met with General Haig. Jaworski has testified that he discussed with Haig the conditions of his acceptance of the job of Special Prosecutor. Jaworski has testified that Haig went into the President's office and that when he returned he told Jaworski that the President understood Jaworski's position and agreed to it. Jaworski understood that he had the right to proceed against anyone, including the President.

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69.1 Leon Jaworski testimony, SJC, 2 Special Prosecutor
Hearings, 570-71, 573, 577, 593-94..... 838

70. On November 1, 1973 Acting Attorney General Bork announced that he had appointed Leon Jaworski Special Prosecutor. Bork stated that Jaworski had been promised the full cooperation of the executive branch in the pursuit of his investigations and that the President had given his personal assurance that he would not exercise his constitutional powers with respect to discharge or limit the independence of the Special Prosecutor without first consulting designated Members of Congress.

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71. Buzhardt has testified that on November 5, 1973 Haig informed Buzhardt that a dictabelt of the President's recollections of his April 15, 1973 conversation with Dean could not be located. The President has stated that on the weekend of November 4 and 5, 1973, upon checking his personal diary file, he was unable to find the April 15 dictabelt.

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72. On November 19, 1973 Acting Attorney General Bork filed an amendment to the Special Prosecutor's charter. The amendment provided that the jurisdiction of the Special Prosecutor would not be limited without the President first consulting with the Majority and Minority Leaders in the Congress and the Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus was in accord with his proposed action. On November 21, 1973 Bork wrote to Jaworski explaining that the amendment was to make clear that the assurances concerning Congressional consultation applied to all aspects of the Special Prosecutor's independence.

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73. On November 21, 1973 Buzhardt informed Judge Sirica that the June 20, 1972 EOB tape contained an 18-1/4 minute erasure. On that same day, Judge Sirica appointed an advisory panel of experts nominated jointly by the President's Counsel and the Special Prosecutor to examine various tape recordings and to report on their findings.

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73.2 <u>The EOB Tape of June 20, 1972, Report on a Technical Investigation Conducted for the U.S. District Court for the District of Columbia by the Advisory Panel on White House tapes, May '31, 1974</u>	869

74. On November 26, 1973 Buzhardt submitted to Judge Sirica an analysis and an index of the materials subpoenaed by the Special Prosecutor on July 23, 1973. The document particularized claims of executive privilege. The President did not assert that any of the tapes contained national defense information.

74.1	Watergate Special Prosecution Force Memorandum in Response to Analysis, Index and Particularized Claims of Executive Privilege, November 29, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 1, 4.....	Page 876
74.2	Order, December 19, 1973, <u>In re Grand Jury</u> , Misc. 47-73.....	878

75. On November 27, 1973 Buzhardt sent to Jaworski six of the logs of meetings and telephone conversations with the President (Chapin, Gray, Kleindienst, Krogh, Strachan, Young) that had been requested by Cox on June 13, 1973. The Kleindienst log furnished to the Special Prosecutor shows no meeting between the President and Kleindienst on April 25, 1973. The President has stated and Kleindienst has testified that Kleindienst met with the President on April 25, 1973.

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75.3 President Nixon statement, May 22, 1973, 9 Presidential Documents 693, 696... ..	887
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76. On November 29, 1973 the Special Prosecutor filed a four-count felony indictment against the President's former appointments secretary Dwight Chapin charging that Chapin had testified falsely before the Grand Jury regarding the extent of his knowledge of Donald Segretti's activities in the 1972 campaign.

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76.1 United States v. Chapin indictment, November 29, 1973.. 892

77. On November 30, 1973 Egil Krogh pleaded guilty to a one-count information charging that Krogh had conspired to violate the constitutional rights of Dr. Lewis J. Fielding by breaking into his office in 1971. Krogh agreed to disclose all relevant information and documents in his possession and to testify as a witness. On January 3, 1974 Krogh issued a statement on his offense and his role. He stated that he had received no specific instruction or authority whatsoever regarding the break-in from the President, directly or indirectly.

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77.1 <u>United States v. Krogh</u> information, November 30, 1973....	902
77.2 <u>United States v. Krogh</u> docket, 2:.....	906
77.3 Letter from Leon Jaworski to Stephen Shulman, November 30, 1973, Exhibit 1, <u>United States v.</u> <u>Krogh</u>	908
77.4 Egil Krogh statement, January 3, 1974.....	910

78. On December 19, 1973 Jaworski furnished the Senate Judiciary Committee a written summary of his understanding of the arrangement made with the President through General Haig and confirmed by Bork and Attorney General-Designate William Saxbe regarding the independence he was to have in serving as Special Prosecutor. Jaworski stated that it had been expressly confirmed that he was to proceed with complete independence, including the right to sue the President, if necessary; and that the President would not discharge him or take any action that interfered with his independence without first consulting Majority and Minority leaders and Chairmen and ranking members of the Judiciary Committees of the House and the Senate and obtaining a consensus that accorded with his proposed action.

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78.1 Letter from Leon Jaworski to James Eastland,
December 19, 1973, SJC, Saxbe Nomination Hearings 32..... 924

79. On January 15, 1974 the court-appointed panel of experts submitted a summary report respecting the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report included interim conclusions that the erasures occurred in the process of erasing and re-recording at least five to nine separate and contiguous segments and that hand operation of the recording controls of the Uher 5000 machine examined by the experts must have been and were required to produce each erasure segment.

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79.1 Summary Report to Chief Judge John Sirica from the Advisory Panel on the White House Tapes, January 15, 1974, Exhibit 145, <u>In re Grand Jury</u> , Misc. 47-73	926

80. In his State of the Union Address on January 30, 1974 the President said that he had provided to the Special Prosecutor all the material that the Special Prosecutor needed to conclude his investigations and to prosecute the guilty and clear the innocent.

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80.1 President Nixon State of the Union Address, January 30, 1974, 10 Presidential Documents 113, 121.....	932

81. On February 14, 1974 Jaworski wrote to Chairman Eastland of the Senate Judiciary Committee that on February 4 Special Counsel to the President James St. Clair had written Jaworski that the President had decided not to comply with the Special Prosecutor's outstanding requests for recordings relating to the Watergate break-in and coverup. Jaworski also stated that St. Clair subsequently informed him that the President had refused to reconsider the decision to terminate cooperation with the Watergate investigation, at least with regard to producing any tape recordings of Presidential conversations and that the White House had refused cooperation in the investigation of dairy contributions and had refused to allow review of files of two former staff members in the area of the Plumbers investigation. Jaworski stated that requests for documents were still pending.

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81.1 <u>New York Times</u> , February 15, 1974, 12.....	936
81.2 Letter from Leon Jaworski to John Doar, March 13, 1974.....	941

82. On February 15, 1974 the White House released a statement by St. Clair commenting on the Special Prosecutor's February 14 letter to Senator Eastland. St. Clair stated that the President believed he had furnished sufficient evidence to determine whether probable cause existed that a crime had been committed and, if so, by whom.

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82.1 James St. Clair statement, February 15, 1974, 10 Presidential Documents 214-15.....	948

83. On February 25, 1974 Herbert Kalmbach pleaded guilty to charges that he had engaged in illegal activities during his solicitations of campaign contributions in 1970, including the promise of appointment to an ambassadorship in return for a campaign contribution. Kalmbach agreed to make full and truthful disclosure of all relevant information and documents in his possession and to testify as a witness for the United States in cases in which he may have relevant information.

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83.1 <u>United States v. Kalmbach</u> information, Crim. No. 74-86.....	952
83.2 <u>United States v. Kalmbach</u> docket, Crim. No. 74-86.....	954
83.3 <u>United States v. Kalmbach</u> information, Crim. No. 74-87.....	955
83.4 <u>United States v. Kalmbach</u> docket, Crim. No. 74-87.....	956
83.5 Letter from Leon Jaworski to James H. O'Connor, Herbert Kalmbach's attorney, February 13, 1974, <u>United States v. Kalmbach</u>	957

84. On March 1, 1974 John Mitchell, H. R. Haldeman, John Ehrlichman, Charles Colson, Robert Mardian, Kenneth Parkinson and Gordon Strachan were indicted for conspiracy relating to the Watergate break-in. Mitchell, Haldeman, Ehrlichman and Strachan were also indicted for obstruction of justice and for making false statements to the Grand Jury or the Court or agents of the FBI.

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84.1 Watergate Special Prosecution Force press release, March 1, 1974.....	960

85. On March 7, 1974 John Ehrlichman, Charles Colson, G. Gordon Liddy, Bernard Barker, Felipe DeDiego and Eugenio Martinez were indicted for conspiracy to violate civil rights of citizens in the break-in of Dr. Lewis Fielding's office. Ehrlichman was also charged with making false statements to the FBI and false declarations before the grand jury.

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85.1 Watergate Special Prosecution Force press release, March 7, 1974.....	964

86. On March 12, 1974 Jaworski wrote to St. Clair requesting access to taped conversations and related documents to be examined and analyzed as the Government prepares for trial in United States v. Mitchell. Jaworski stated that the evidence sought was material and relevant either as proof of the Government's case or as possible exculpatory material required to be disclosed to the defendants.

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86.1 Letter from Leon Jaworski to James St. Clair, March 12, 1974, attached as Exhibit A to Leon Jaworski's April 16, 1974 affidavit in <u>United States v. Mitchell</u> , Crim. No. 74-110.....	966

87. On March 15, 1974 the Special Prosecutor served a subpoena on the White House calling for certain materials involving neither the Watergate cover-up nor the Fielding break-in. On March 29, 1974 the White House agreed to comply with the subpoena.

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87.1 <u>New York Times</u> , March 22, 1973, 1, 26.....	970
87.2 <u>New York Times</u> , March 30, 1974, 1, 14.....	971

88. On April 11, 1974 Jaworski wrote to St. Clair informing him that in view of the failure to produce the materials requested by Jaworski in his letter of March 12, 1974 Jaworski would seek a subpoena for the materials deemed necessary for trial in United States v. Mitchell.

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88.1 Letter from Leon Jaworski to James St. Clair, April 11, 1974, attached as Exhibit B to Leon Jaworski's April 16, 1974 affidavit in United States v. Mitchell, Crim. No. 74-110..... 974

89. On April 11, 1974 the House Judiciary Committee issued a subpoena to the President for tape recordings and documents relating to specified conversations which took place in February, March and April 1973 between the President and Haldeman, Ehrlichman, Dean, Kleindienst and Petersen.

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89.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, April 11, 1974.....	978

90. On April 12, 1974 Jaworski wrote to Senator Charles Percy of the Senate Judiciary Committee stating that the government was obligated to produce at trial the material requested in Jaworski's March 12, 1974 letter respecting the trial of United States v. Mitchell, and that the failure of the White House to produce other requested evidence was impeding grand jury investigations of matters unrelated to the Water-gate cover-up.

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90.1 Letter from Leon Jaworski to Charles Percy, April 12, 1974, <u>Congressional Record</u> S7103-04.....	984

91 On April 16, 1974 the Special Prosecutor, joined by defendants Colson and Mardian, moved that a trial subpoena be issued in United States v. Mitchell directing the President to produce tapes and documents relating to specified conversations between the President and the defendants and potential witnesses. On April 18, 1974 Judge Sirica granted the motion.

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91.1 Motion, April 16, 1974, <u>United States v. Mitchell</u> , Crim. No. 74-110.....	988
91.2 Order, April 18, 1974, <u>United States v. Mitchell</u> , Crim. No. 74-110.....	989

92. On April 29, 1974 the President addressed the Nation to announce his answer to the House Judiciary Committee subpoena of April 11 for additional Watergate tapes. The President stated that the next day he would furnish to the Committee transcripts prepared by the White House of relevant portions of all the subpoenaed conversations. The President said that he had personally decided questions of relevancy. With regard to four subpoenaed conversations that occurred prior to March 21, 1973 the President informed the Committee that a search of the tapes had failed to disclose two of these conversations, furnished a transcript of a portion of the March 17 conversation between the President and Dean that related to the Fielding break-in, and furnished a transcript of a telephone conversation between the President and Dean on March 20, 1973.

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92.1 President Nixon Address to the Nation, April 29, 1974, 10 Presidential Documents 450-57.....	992
92.2 Appendix, Submission of Recorded Presidential Conversations to the Committee on the Judiciary by President Richard Nixon, April 30, 1974.....	1000

93. On May 1, 1974 the President entered a special appearance before Judge Sirica and moved to quash the Special Prosecutor's subpoena issued April 18, 1974. The President invoked executive privilege with respect to all subpoenaed conversations except for the portions of twenty of the conversations he had made public on April 30 by way of edited transcripts.

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93.1 Special Appearance and Motion to Quash, May 1, 1974, <u>United States v. Mitchell</u> , Crim. No. 74-110.....	1006
93.2 Formal Claim of Privilege, May 1, 1974, <u>United States v. Mitchell</u> , Crim. No. 74-110.....	1007

94. On May 15, 1974 the House Judiciary Committee issued a subpoena to the President for the production of tape recordings and other evidence relating to specified conversations between the President and Haldeman, Colson and Mitchell on April 4, 1972 and on June 20 and 23, 1972. On the same day the Committee issued a subpoena to the President for the President's daily diaries for certain specified time periods in 1972 and 1973.

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94.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 15, 1974.....	1010
94.2 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 15, 1974.....	1012

95. On May 20, 1974 Judge Sirica denied the President's motion to quash the Special Prosecutor's subpoena for tape recordings and other documents in United States v. Mitchell and ordered the President to produce the objects and documents.

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95.1 Order and Opinion, May 20, 1974, <u>United States</u> v. <u>Mitchell</u> , Crim. No. 74-110, 1, 8.....	1016

96. On May 20, 1974 Jaworski wrote to Senator Eastland informing him that the President was challenging the right of the Special Prosecutor to bring an action against him to obtain evidence in United States v. Mitchell. Jaworski stated that this position contravened the express agreement made by Haig, after consultation with the President, that if Jaworski accepted the position of Special Prosecutor he would have the right to press legal proceedings against the President.

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96.1 Letter from Leon Jaworski to James Eastland, May 20, 1974 (received from Watergate Special Prosecution Force).....	1020

97. On May 22, 1974 the President informed House Judiciary Committee Chairman Rodino that he declined to produce the tapes and documents covered by the Committee's subpoenas of May 15, 1974. The President asserted that the Committee had the full story of Watergate insofar as as it related to Presidential knowledge and Presidential actions.

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97.1 Letter from President Nixon to Chairman Rodino, May 22, 1974	1028

98. On May 30, 1974 the House Judiciary Committee issued a subpoena to the President to produce documents and tape recordings of specified conversations involving the President and Haldeman, Ehrlichman, Dean, Colson and Petersen.

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98.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 30, 1974.....	1032

99. On May 31, 1974 the court-appointed panel of experts filed their final report on the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report concluded that: (i) the erasing and recording producing the buzz on the tape were done on the examined tape, which was probably the original tape, (ii) the Uher 5000 recorder machine used by Woods for transcription probably produced the buzz, (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and, on at least five occasions, required hand operation of the controls of the Uher 5000 recorder to produce the erasures and recording, and (iv) the erased portion of the tape originally contained speech which, because of the erasures and rerecording, could not be recovered. The panel stated that in making its final report it had considered suggestions and alternative interpretations that differed markedly from the panel's and had discussed the material with technical advisors employed by counsel for the President.

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99.1 <u>The EOB Tape of June 20, 1972, Report on a Technical Investigation Conducted for the U.S. District Court for the District of Columbia by the Advisory Panel on White House Tapes, May 31, 1974.....</u>	1038

100. On May 31, 1974 the President filed a claim of constitutional privilege with respect to a grand jury subpoena issued February 20, 1974 seeking the production of correspondence between the President and former FCRP Chairman Maurice Stans regarding selections and nominations for government offices including ambassadorships. The President asserted that, excluding the records relating to four named individuals as to whom he waived the privilege, it would be inconsistent with the public interest to produce the records.

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100.1 <u>New York Times</u> , May 18, 1974, 14.....	1046
100.2 Formal Claim of Privilege, May 31, 1974, <u>In re</u> <u>Grand Jury</u> , Misc. 74-48.....	1047
100.3 Letter from Leon Jaworski to John Doar, March 13, 1974.....	1048

101. On June 3, 1974 Charles Colson pleaded guilty by negotiated plea to a one-count information charging obstruction of justice in connection with the trial of the Ellsberg case by devising and implementing a scheme to defame and destroy the public image and credibility of Ellsberg and his defense counsel with intent to influence, obstruct and impede the conduct and outcome of the trial. Colson agreed to provide statements under oath and to produce all relevant documents in his possession upon request of the Special Prosecutor and testify as a witness for the United States in any and all cases with respect to which he may have information. In return the Special Prosecutor agreed to dismiss all charges against Colson in United States v. Mitchell and United States v. Ehrlichman.

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101.1	<u>United States v. Colson</u> information, June 3, 1974.....	1054
101.2	Letter from Leon Jaworski to David Shapiro, May 31, 1974.....	1057

102. On June 10, 1974 the President's counsel informed the House Judiciary Committee that the President declined to furnish the material called for in the Committee's subpoena of May 30, 1974. In a separate letter of the same date, the President responded to Chairman Rodino's letter of May 30, 1974 for the Committee respecting the refusal of the President expressed in his May 22, 1974 letter to the Committee declining to produce Presidential tapes and diaries called for in the Committee's subpoenas of May 15, 1974.

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102.1 Letter from James St. Clair to Chairman Rodino, June 10, 1974.....	1060
102.2 Letter from President Nixon to Chairman Rodino, June 9, 1974.....	1061
102.3 Letter from Chairman Rodino to President Nixon, May 30, 1974.....	1065
102.4 Letter from President Nixon to Chairman Rodino, May 22, 1974.....	1067

STATEMENT OF INFORMATION

AND

SUPPORTING EVIDENCE

WATERGATE SPECIAL PROSECUTORS

JUDICIARY COMMITTEE'S IMPEACHMENT INQUIRY

April 30, 1973 - July 1, 1974

Part 2



46. On August 29, 1973 Judge Sirica issued an order requiring the President to turn over the recordings sought by the July 23, 1973 subpoena for in camera review by the Court. On September 6, 1973 the White House filed a petition for a writ of mandamus in the United States Court of Appeals for the District of Columbia Circuit requesting that an order be entered directing Judge Sirica to vacate his order.

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46.1 Order, August 29, 1973, <u>In re Grand Jury</u> , Misc. 47-73.....	586
46.2 Petition for Writ of Mandamus, September 6, 1973, <u>Nixon v. Sirica, Cox</u> , 73-1962, 1, 2, 6.....	587

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA)
DUCES TECUM ISSUED TO)
RICHARD M. NIXON, OR ANY)
SUBORDINATE OFFICER, OF-)
FICIAL, OR EMPLOYEE WITH)
CUSTODY OR CONTROL OF CERTAIN)
DOCUMENTS OR OBJECTS)

Misc. No. 47-73

FILED

AUG 29 1973

ORDER

JAMES F. DAVEY, Clerk

This matter having come before the Court on motion of the Watergate Special Prosecutor made on behalf of the June, 1972 grand jury of this district for an order to show cause, and the Court being advised in the premises, it is by the Court this 29th day of August, 1973, for the reasons stated in the attached opinion,

ORDERED that respondent, President Richard M. Nixon, or any subordinate officer, official or employee with custody or control of the documents or objects listed in the grand jury subpoena duces tecum of July 23, 1973, served on respondent in this district, is hereby commanded to produce forthwith for the Court's examination in camera, the subpoenaed documents or objects which have not heretofore been produced to the grand jury; and it is

FURTHER ORDERED that the ruling herein be stayed for a period of five days in which time respondent may perfect an appeal from the ruling; and it is

FURTHER ORDERED that should respondent appeal from the ruling herein, the above stay will be extended indefinitely pending the completion of such appeal or appeals.


Chief Judge

STIRICA ORDER
ENTERED 8/29/73

United States Court of Appeals
for the District of Columbia Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT SEP 6 1973

No. _____

HUGH E. KLINE
CLERK

Richard M. Nixon,
President of the United States,

Petitioner,

v.

The Honorable John J. Sirica,
United States District Judge,

Respondent,

and

Archibald Cox,
Special Prosecutor,
Watergate Special
Prosecution Force,

Party in Interest.

73-1962

Petition for Writ
of Mandamus

The Honorable Judges of the United States Court of
Appeals for the District of Columbia Circuit:

Richard M. Nixon, pursuant to Rule 21, Federal
Rules of Appellate Procedure, files this petition
for a writ of mandamus to the Honorable John J. Sirica,
Chief Judge of the United States District Court for the
District of Columbia, directing the Honorable John J.
Sirica to vacate his order entered on the 29th day of
August 1973 in the case of In re Grand Jury Subpoena

-2-

Duces Tecum Issued to Richard M. Nixon, or Any Subordinate Officer, Official, or Employee with Custody or Control of Certain Documents or Objects, Misc. No. 47-73, in the United States District Court for the District of Columbia, a copy of which order and supporting opinion is attached hereto as Exhibit A, whereby the Honorable John J. Sirica ordered production of certain tape recordings for in camera inspection by said Honorable John J. Sirica to determine whether such tape recordings or portions thereof should be presented as evidence to an incumbent grand jury of the United States District Court for the District of Columbia, and for cause Richard M. Nixon shows as follows:

Nature of the Suit and Proceedings Below

On July 23, 1973, at the direction of the Special Prosecutor, Watergate Special Prosecution Force, the Clerk of the United States District Court for the District of Columbia issued a subpoena duces tecum to Richard M. Nixon, or any subordinate officer whom he designates who has custody or control of certain documents or objects, directing him to produce certain specified documents or objects as evidence before an

- 6 -

to withhold records of his private conversations with his closest advisers from a grand jury if he deems disclosure to be contrary to the public interest.

(b) Whether the district court has the authority to enforce a subpoena against a President of the United States by ordering that information produced for in camera inspection, when the President has interposed a valid and formal claim of executive privilege.

WHEREFORE, Richard M. Nixon respectfully requests

(1) That an order be issued directing the Respondent and the Party in Interest to answer the foregoing petition within a time to be set by the Court:

(2) That an order be entered directing the Honorable John J. Sirica to vacate his order dated August 29, 1973 and to dismiss the petition of the Special Prosecutor dated July 26, 1973; and

(3) That Richard M. Nixon be granted such additional relief and process as may be appropriate.

Respectfully submitted,

LEONARD GARMENT
J. FRED BUZHARDT
CHARLES ALAN WRIGHT
DOUGLAS M. PARKER
ROBERT T. ANDREWS
THOMAS P. MARINIS, JR.

Attorneys for the President

The White House
Washington, D.C. 20500
Telephone Number: 456-1414

By: 

47. In September 1973 the Special Prosecutor's office received the Political Matters Memoranda file kept by Strachan that had been requested on July 10, 1973 and that the President had agreed to furnish to the Special Prosecutor in his letter to Judge Sirica of July 25, 1973. Cox has testified that Buzhardt wanted to go through the file before turning it over and Cox agreed so long as he got to see the entire file.

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47.1 Archibald Cox testimony, SJC, 1 Special Prosecutor Hearings 16-17.....	592
47.2 Letter from President Nixon to Judge Sirica, July 25, 1973 (received from Watergate Special Prosecution Force).....	594

some instances guilt of wrongdoing, is in the White House or Executive Offices. I am not referring to tapes alone, and I am not referring to Watergate alone. I am referring to a wide variety of papers. This is a subject on which I want to be just as accurate as I possibly can because it has been a matter of inconsistent assertions between myself and General Haig. I am relying primarily on the paper put together for me as of October 17, as to what information we had obtained and what information we had not obtained, and I said on the basis of that paper, and I believe it to be true, that on the whole our efforts to obtain information by the White House bore frustration and delay and that it was not forthcoming.

General Haig said yesterday on a public television show:

Nothing could be further from the truth. We have provided him with a full array of documentary evidence. Where the President has taken issue with Professor Cox has been on the subject of those limited documents involving personal discussions by the President himself and memoranda covering the substance of those discussions. All of the other data has been provided.

I thought under the circumstances I should give you the information put together at my request, and I believe accurately, by one of the young men on my staff going through the files.

Certainly some things were furnished to us by counsel to the President. There were a number of logs, diaries, either scheduling or listing meetings, and telephone calls between various individuals and the President. We did get the logs for Mr. Dean, Mr. Ehrlichman, Mr. Haldeman, Mr. Mitchell, and Mr. Petersen. I said earlier that we had not received the logs showing visits and telephone conversations between the President and Messrs. Chapin, Hunt, Liddy, Strachan. General Haig said that I had been informed that there were no meetings between the President and any of those gentlemen. I don't think our written record shows that we received that advice. I am fully prepared to think that what must have happened was that J. Fred Buzhardt, the President's counsel in this matter, telephoned me and told me that, and that I forgot to dictate a memorandum for the file, and then a record was made up from the file; and I assume that I was in error in those particulars.

There remain, however, Colson, Gray, Kleindienst, Krogh, LaRue, and Young.

I assume that those will be forthcoming. The chief point that I make is simply that we asked for them on June 13, and here it is practically the end of October, and that really is an awful long time to wait to get that kind of information. Now, again, this is something that can be checked out and should be checked out as a fact. I am simply giving you the best information I have so that you can see the picture.

A second important thing which we did obtain was the so-called "Fielding-ITT" file. Third, we were supplied a file kept by Mr. Strachan and entitled "political matters memoranda." Here again, I think, part of the basis for what I call frustration and delay is illustrated. Judge Sirica was assured on July 26 that we would be supplied with that file. We first saw it sometime in September. Some of the passage of time was undoubtedly due to the fact that Mr. Buzhardt said to me over the phone: Look, I want to go through it and see what's in it before we turn it over to you. I think there are a lot of irrelevant and embarrassing things. And I said: Sure, go through it as long as

I can see them all. If there is something that is truly irrelevant and it would embarrass anybody in a way that was irrelevant to the investigation to have it come out, I wasn't going to have it come out.

So, again, it is simply the passage of time and delay that I am seeking to emphasize in getting action.

There were undoubtedly other individual papers that we got, and I can't remember all of them. One was Howard Hunt's pass to the White House which we finally got with the aid of a subpoena. Another was a memorandum made by Presidential Assistant Kehrli dealing with the termination of Hunt's employment. A third was the list of contributions kept by the President's secretary, Miss Rosemary Woods. And there were undoubtedly others. But for the most part I must say it seemed to me that our efforts were very unsuccessful.

Specifically there were a lot of papers, and I am going just to make clear that we were not furnished all papers other than those relating to Presidential conversations, and I am going to read some of the requests.

On August 23, we had a list as follows:

All records and logs reflecting meetings or telephone conversations of Young, Krogh, Colson, Ehrlichman, Hunt and Liddy, between June 13, 1971, and December 31, 1971.

Those dates embrace the various activities of the plumbers and particularly the break-in at Dr. Fielding's.

Logs of meetings between the President and each of the meetings named in the above paragraph during the same period.

Three, all records sent to or received by the individuals named above relating to the Pentagon Papers, Ellsberg, Fielding, Hunt, Liddy, special project No. 1, Project Odessa or Project O.

Fourth, telephone conversations in those dates.

Fifth, all records relating to the subjects described above that were removed from Krogh's files at Department of Transportation and delivered to the White House or Executive Office Building between December 1, 1972 and May 31, 1973.

This is one of the things that led me to remark that Presidential files had a way of expanding.

Sixth, all records relating to the subjects described in (D) above that were transmitted from Young to Ehrlichman between March 23 and March 27, 1973, and on April 30, 1973.

Next,

All records relating to subject described in (C) above that were deposited in Presidential files on behalf of Ehrlichman, Young, Krogh or Colson.

The letter also asked for the dates of deposit and the individual.

And the final one of this particular group:

All records relating to Wagner and Baroody, including all records relating to the delivery of five thousand dollars, and records of visits by Baroody to the White House or Executive Office Building.

On August 27 we requested all records relating to Joseph Kraft, electronic surveillance of Joseph Kraft, and then it goes on further, identification of specifics and there is no need to take your time to read it.

After about a month and a half of discussion on this subject we identified nine specific items that were particularly urgent among them, but according to my records none of those were—have not yet been—produced.

THE WHITE HOUSE

WASHINGTON

July 25, 1973

Dear Judge Sirica:

White House Counsel have received on my behalf a subpoena duces tecum issued out of the United States District Court for the District of Columbia on July 23rd at the request of Archibald Cox. The subpoena calls on me to produce for a Grand Jury certain tape recordings as well as certain specified documents. With the utmost respect for the court of which you are Chief Judge, and for the branch of government of which it is a part, I must decline to obey the command of that subpoena. In doing so I follow the example of a long line of my predecessors as President of the United States who have consistently adhered to the position that the President is not subject to compulsory process from the courts.

The independence of the three branches of our government is at the very heart of our Constitutional system. It would be wholly inadmissible for the President to seek to compel some particular action by the courts. It is equally inadmissible for the courts to seek to compel some particular action from the President.

That the President is not subject to compulsory process from the other branches of government does not mean, of course, that all information in the custody of the President must forever remain unavailable to the courts. Like all of my predecessors, I have always made relevant material available to the courts except in those rare instances when to do so would be inconsistent with the public interest. The principle that guides my actions in this regard was well stated by Attorney General Speed in 1865:

Upon principles of public policy there are some kinds of evidence which the law excludes or dispenses with. * * * The official transactions

between the heads of departments of the Government and their subordinate officers are, in general, treated as "privileged communications." The President of the United States, the heads of the great departments of the Government, and the Governors of the several States, it has been decided, are not bound to produce papers or disclose information communicated to them where, in their own judgment, the disclosure would, on public considerations, be inexpedient. These are familiar rules laid down by every author on the law of evidence.

A similar principle has been stated by many other Attorneys General, it has been recognized by the courts, and it has been acted upon by many Presidents.

In the light of that principle, I am voluntarily transmitting for the use of the Grand Jury the memorandum from W. Richard Howard to Bruce Kehrli in which they are interested as well as the described memoranda from Gordon Strachan to H. R. Haldeman. I have concluded, however, that it would be inconsistent with the public interest and with the Constitutional position of the Presidency to make available recordings of meetings and telephone conversations in which I was a participant and I must respectfully decline to do so.

Sincerely,



Honorable John J. Sirica
U.S. Court House
3rd and Constitution Avenue, N. W.
Room 2428
Washington, D.C. 20001

cc: Honorable Archibald Cox
Special Prosecutor

Enclosure: Howard/Kehrli memorandum



48. On September 24, 1973 Cox told Richardson that an effort was being made to place White House documents out of his reach by removing materials or files thought to be the subject of a subpoena and placing such materials or files among the Presidential papers. Special Assistant to the President Patrick Buchanan has testified that prior to his appearance before the SSC on September 26, 1973 and the Grand Jury on September 27, 1973, White House counsel instructed him to take his 1971 and 1972 files to the basement of the Executive Office Building. Buchanan has also testified that he always thought that such papers were Presidential papers.

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48.1 Elliot Richardson testimony, SJC, 2 Special Prosecutor Hearings 425.....	598
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48.3 Patrick Buchanan testimony, 10 SSC 3905-06, 3911.....	600
48.4 Letter from Archibald Cox to J. Fred Buzhardt, August 23, 1973 (received from Watergate Special Prosecution Force).....	603

make whether Charley Johnson does it once a year or they do it three times a day?

Mr. RICHARDSON. Well, I don't know to what extent, if any, I don't want to get into the question of the extent to which, if any, there are or have been such break-ins. So far as my background in the Department of Defense is concerned, I would say if there had been any I didn't know about them, and generally speaking, they are not likely to have been. But, proceeding to your question, it is one thing to have a group of people who are set up, let us say, under the auspices of the White House, and told that they are supposed to get information about leaks or they are supposed to get information about individual activities of some group or organization, and then under that activity, whatever the broad mandate they have, have a process whereby they engage in activities having no really plausible justification.

The question, since you would be dealing with a prosecution presumably under the Civil Rights Act of 1964, or the earlier Civil Rights Act, is whether or not you have a sufficient showing of intent to deprive a person of civil rights, and it can make a difference, therefore, for purposes of proof of criminal conduct, what was the footing on which this was done. Mr. Cox was the individual who in the first instance brought to my attention the thought that, as I testified earlier in connection with my conversation with him of July 23, that it should make a difference what the authorization procedures were, and indeed the letter to the Secret Service that I mentioned was justified to me on the basis that it was designed to find out what in the first instance these established procedures were.

Senator HART. In the time remaining, since Senator Kennedy did not have an opportunity to complete that chronology, what was the substance of the conversation or conversations on September 24 which you had with the White House?

Mr. RICHARDSON. Yes. That was a conversation with Mr. Cox, and it touched at the outset on the problem of papers being put out of reach, and he referred there, the first time I had heard it, as he later did in his own press conference, to the allegation that one very loyal White House staffer, when he knew that a subpoena was coming, took materials out of one file and put it in another. Then he went on to refer to a request I would shortly receive from him that there be assigned to him responsibility for certain investigations of campaign contributions in the 1968 campaign. He said that he thought that on the whole I would agree, since there was some linkage with 1972 activities that he thought could be shown. That is all there was of that.

Senator HART. It was not then a call from the White House to you?

Mr. RICHARDSON. No.

Senator HART. It was a report from Professor Cox?

Mr. RICHARDSON. Yes.

Senator HART. Explaining, first, with respect to the transfer of papers in the White House and, second, the appropriateness of his undertaking an inquiry that involved 1968 campaign contributions so long as there was some linkage?

Mr. RICHARDSON. Yes.

Senator HART. I was told at the noon hour that a memorandum dated July 9, given us by your Mr. Smith, shows that there was a preliminary screening by the Criminal Division from that date on,

Another example of our inability to get papers has to do with the so-called milk producers file. Back, I am afraid I can't tell you the date, but back several months ago I was with the Attorney General one day and I said: Look, the file of papers on the milk producers is in the possession of the lawyers of the Civil Division, and I have been trying to get it from the President's counsel. If the Civil Division can see it, I don't see why I can't see it.

And the Attorney General said: Well, I agree with you. I don't see why you can't see it. I will tell them to turn it over to you.

He stopped and said: I'd better tell the President's counsel that I'm doing this before I do it, and when he did tell him he was forbidden to turn it over.

So much for that group of things.

There are, of course, and I need only mention them, to make the list complete, tapes and memoranda relating to conversations with the President. I have already mentioned the subject of delay, and I have referred in general terms to taking papers from one set of files and putting them among Presidential papers. An individual came to the office who, well, he was a member of the White House staff, and while I don't think I should identify him, I think it is worthwhile reading a summary of part of the interview: X also explained that immediately after Y testified before the Senate Watergate Committee, Y indicated to X that the Senate was going to subpoena X and Y's political files. X consulted with Mr. Buzhardt who determined that to avoid the subpoena problem all of Y's political files should be deposited in the President's files. That day X combed his files and deposited the relevant material in the President's files.

I am relying on hearsay, but I understand that we had that experience in trying to get Hunt's pass to the White House, although we finally did get it, I must emphasize, and you heard me refer to papers of Egil Krogh which had been taken out of his files and put into the President's files.

I want to say one thing more on the subject of obtaining papers: I do think that it is only fair to note that during this period we were engaged in litigation over the extent of Presidential privilege, and litigation had been going on since sometime in July. I did not press requests that I might otherwise have pressed because it seemed to me that we ought to get the test case out of the way first. I did not attempt to go public on it because it seemed to me that the answer would be: Well, you don't really expect us to comply with all this while we are finding out the extent of Presidential privilege.

Now that that question has been adjudicated I would expect that the office would have a very large number of requests and would take out a very large number of subpoenas because there are many papers which ought to be obtained and scrutinized. Again, I want to emphasize that wanting to see a paper does not mean that it contains something evil or inculpatory. Maybe just the reverse. It is just as important if it is the reverse.

I have indicated—I'm sorry to be so longwinded, but I will try to hurry on here—I have indicated that I thought that a statutory office of Special Prosecutor should be created. I would emphasize that he should have independent powers. It seems to me imperative that his jurisdiction be at least as broad as the jurisdiction that was given to me. I noted, I think I quote it correctly, that in the press

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writer for the President on major speeches; oversight of the President's daily news summary, which is prepared by Mort Allen; and third, the preparation of the briefing books and briefing materials for the President for all his press conferences, which has been a function of mine for almost 8 years.

Mr. DASH. Now, to whom in the White House did you report from the period of your appointment to the White House position that you held through May of this year?

Mr. BUCHANAN. May of this year? Well, through April of this year, the primary channel of communication with the President would be H. R. "Bob" Haldeman, President's Chief of Staff. He would not be the exclusive channel. The President would contact me on occasion directly. But that would be the primary channel.

Mr. DASH. Now, in the course of your duties at the White House, did you have occasion to write a series of memorandums to the President, or to Mr. Haldeman, or anybody else?

Mr. BUCHANAN. Well, being a writer, yes; I did. That is the format I generally used for communication in the White House, was memorandums. I have written numerous, scores if not hundreds, of memorandums to both the President and, I am sure, to Mr. Haldeman. That is correct.

Mr. DASH. Now, Mr. Buchanan, did you bring with you or produce in accordance with the subpoena issued to you on Sept. 20, 1973, copies of your memorandums dealing with political strategy for the President or Presidential primaries of 1972 and the campaign?

Mr. BUCHANAN. No, sir; I did not. I first went to get the direction of the Director of the President's Counsel. I believe this matter is in court. I have read—because of the brevity of the time I was given to prepare for this testimony, I have not had an opportunity to read all of the political strategy memos that I have sent between 1971 and 1972, but I have read a number of them. Again, I did not bring them here; I first went for the direction of the President's Counsel.

Mr. DASH. Do you have those memorandums in your possession in your office at the White House?

Mr. BUCHANAN. No, that would not be precise. I have some in my White House files. Most of my memorandums from 1971 to 1972 are down in the basement of the Executive Office Building. I have had the opportunity to Xerox some of these, my secretary has. That is a limited number, just because of the sheer volume.

While I am allowed to Xerox and read these memorandums, I could not without authorization from the President's Counsel remove them from the White House, nor would I.

Mr. DASH. Would you tell us when did your file of memorandums become part of the Presidential Papers and not in your complete—

Mr. BUCHANAN. I think they have always been part of the Presidential Papers.

Mr. DASH. When were they removed from your control?

Mr. BUCHANAN. They were removed at my direction and, frankly, I thought it was only temporary. It was indicated, an individual who had worked for me in the campaign in 1972 came back from a committee hearing and he said, "They are going to subpoena all our files."

So I said, "Well, let's go down to the counsel's office."

So we went down to the counsel's office and the counsel indicated that it would be best if all our files were placed under, taken down—

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stairs, at least from 1971 and 1972, and so they were. But I had that access and I did have the right to Xerox those particular memorandums—

Mr. DASH. What counsel advised you?

Mr. BUCHANAN. I couldn't be certain which individual. It was certainly Mr. Buzhardt and Mr. Garment and/or Mr. Parker, I would think.

Mr. DASH. And is it the position of counsel at the White House that these memorandums dealing with political campaign strategy are not available to us under the subpoena because of executive privilege?

Mr. BUCHANAN. I think you will have to ask counsel what their position is, but I think that is not unreasonable in light of the fact that many of the memorandums are to the President of the United States. Many of the memorandums deal with recommendations for Presidential action. Many of the memorandums were prepared at the direction of the President.

I think you would have to talk to those individuals to ascertain what the legal grounds on which they withheld them are.

Senator ERVIN. If I may interject myself at this point, the White House and myself have very fundamental disagreements about the nature and scope of executive privilege. The Constitution and laws of the United States place certain obligations upon the President. I accept executive privilege to a limited extent. I think the President is entitled to receive the uninhibited advice of his aides, which is being sought by him or given by them, to enable him to perform in a lawful manner the official duties of his office.

For that reason, I accept the validity of executive privilege to this extent: In my judgment, the President is entitled to have kept secret confidential information, confidential communications made to him by an aide, or even confidential communications among his aides, which have for their purpose enabling him to perform in a lawful manner his constitutional and legal duties.

Further than that, executive privilege does not go. Since it is not a part of the official duty of a President to run for reelection, and since it is not the official duty of a President to conceal evidence of wrongdoing, I do not think the President has the right to withhold any information in his possession that deals with political activities, or which deals with wrongdoing. And I am gratified to know that former Attorney General John N. Mitchell agreed with me on my view of executive privilege at the time he was before this committee.

Mr. BUCHANAN. Mr. Chairman, first, I think it would be a mistake to make the assumption that anything in my memorandums indicates a recommendation for wrongdoing.

Second, a number of these memorandums were prepared prior to the campaign of 1972, and they deal with my analysis of individuals which would also have an impact on Presidential strategy with regard to legislation and Presidential strategy, say, with regard to defense issues, because we were being criticized on those scores.

Third, there is no question that the character of my rhetoric in some of these memorandums would be, in your term, uninhibited. I have been writing these confidential memorandums to the President for close to 8 years and—that will be my statement.

Senator ERVIN. I didn't intend to intimate that I had any opinion that there was anything in your memorandums that indicated wrong-

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Mr. DASH. All right, now. Sometime during the summer of 1971 were you asked to direct an investigation of Daniel Ellsberg?

Mr. BUCHANAN. That is correct.

On July 6—if I recollect the date correctly. I was called to a meeting in Mr. Ehrlichman's office where Mr. Ehrlichman, Mr. Colson, and Mr. Haldeman were present at various times, and I was asked to not so much conduct the investigation, I believe, as to oversee the investigation and to serve as White House liaison, an assignment I rejected.

Mr. DASH. In rejecting it—by the way—what reason did you give for rejecting it?

Mr. BUCHANAN. I felt that for me an investigation of Daniel Ellsberg was a waste of my time and my abilities.

Mr. DASH. Did you prepare any memorandums with regard to that assignment request?

Mr. BUCHANAN. I did. I rejected the offer verbally, and subsequent to that I believe on July 8 I did prepare a memorandum for Mr. Ehrlichman indicating my reasons why I not only did not want to undertake it myself, but did not see the value of doing so. I do not have a copy of that memorandum, Mr. Dash.

Mr. DASH. We do not have either.

Mr. BUCHANAN. I am going to talk to the grand jury tomorrow about the particular memorandum but I have to go back to the White House and sit down and study it before I could give you any details.

Mr. DASH. I am not asking you for that at this moment and we do not have a copy of it either, Mr. Buchanan. But I would like to show you a memorandum dated August 26, 1971, from Mr. David Young to Mr. John Ehrlichman which is already in the record of this committee as exhibit No. 91. Do you have it there? If it is not in the file, it should be loose.

Mr. BUCHANAN. Exhibit No. 91?*

Mr. DASH. It should be loose on the top of your pile.

Mr. BUCHANAN. Are these in chronological order the way they are going to come, right?

Mr. DASH. If you will turn to page 4 of that memorandum, you will note that there is an item 9 that raises the question: "How quickly do we want to try to bring about a change in Ellsberg's image?" And you see an asterisk—

Mr. BUCHANAN. This thing, is this from David Young, the 28th, page 4?

Mr. DASH. Yes, page 4.

Mr. BUCHANAN. How far down here?

Mr. DASH. Down to the last line.

Senator BAKER. What date?

Mr. DASH. August 26, Senator Baker. I think everyone has it.

Mr. BUCHANAN. I have got it, Mr. Dash.

Mr. DASH. Yes. If you have it, it is No. 9, the last line of the memo on page 4 and the question put there is: "How quickly do we want to try to bring about a change in Ellsberg's image?" You will note there is an asterisk, and if you turn the page—

Mr. BUCHANAN. Right.

*See Book 6, p. 2646.

August 23, 1973

J. Fred Buzhardt, Esq.
Counsel to the President
White House
Washington, D. C. 20500

Dear Mr. Buzhardt:

On August 13, 1973, a federal grand jury was impanelled to investigate possible violations of various federal criminal statutes. The grand jury has begun hearing testimony and receiving evidence relating to the alleged September 3, 1971, burglary of the offices of Dr. Lewis J. Fielding, Beverly Hills, California, and the alleged cover-up of the burglary. We have been informed that the alleged burglary was planned, perpetrated and covered-up by members of the White House staff and their agents. In order to investigate these allegations fully it is essential that as we present the case to the grand jurors we be furnished certain White House records relating to various individuals and subject matters. Accordingly, I request that you promptly make available the records and other material described below:

1. All records, logs or other material reflecting meetings, appointments or telephone conversations between June 13, 1971, and December 31, 1971, for each of the following individuals: David Young, Egil Krogh, Charles Colson, John Ehrlichman, E. Howard Hunt, Jr. and G. Gordon Liddy.*

*Some, but not all, of the material included in categories 1 and 2 has been received by this office as follows:

A. For John Ehrlichman: (1) Copies of typed meeting logs from 1970 through April 1973, excluding July 23 through July 27, 1971; (2) Copies of desk calendars 1971 through 1973.

B. For Charles Colson: Copies of desk calendars from 1971 through April 1973.

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2. All records, logs or other material reflecting meetings, appointments or telephone conversations between June 13, 1971, and December 31, 1971, of the President with each of the following individuals: David Young, Egil Krogh, Charles Colson, John Ehrlichman, E. Howard Hunt, Jr. and G. Gordon Liddy.*

3. All records relating to the Pentagon Papers, Daniel Ellsberg, Dr. Lewis J. Fielding, E. Howard Hunt, G. Gordon Liddy, Hunt and Liddy Special Project No. One, Project Odessa, or Project "O", that were authored or initiated by, addressed to or received by any of the following individuals: David Young, Egil Krogh, Charles Colson, John Ehrlichman, E. Howard Hunt, Jr., or G. Gordon Liddy.

4. All records, including telephone toll call records, reflecting telephone calls placed from or received in the offices of David Young, Egil Krogh, John Ehrlichman, Charles Colson, G. Gordon Liddy, and E. Howard Hunt, Jr. for the period of time between August 11, 1971, and September 15, 1971.

5. All records relating to Daniel Ellsberg, the Pentagon Papers, Dr. Lewis J. Fielding, E. Howard Hunt, Jr., G. Gordon Liddy, Hunt and Liddy Special Project No. One, Project Odessa, or Project "O", that were removed from the files of Egil Krogh at the Department of Transportation and delivered to the White House or Executive Office Building by or on behalf of Egil Krogh or Saundra (Greene) Sheperd from the period beginning December 1, 1972, until May 31, 1973, including all records relating to G. Gordon Liddy delivered to the safe in Egil Krogh's former office and subsequently transferred therefrom to the custody or control of Leonard Garment.

6. All records relating to the Pentagon Papers, Daniel Ellsberg, Dr. Lewis J. Fielding, Hunt and Liddy Special Project No. One, Project Odessa, Project "O", E. Howard Hunt, Jr., and G. Gordon

*See footnote on preceding page.

Liddy, that were transmitted to John Ehrlichman from or on behalf of David Young between March 23, 1973, and March 27, 1973, and on April 30, 1973.

7. All records relating to the Pentagon Papers, Daniel Ellsberg, Dr. Lewis J. Fielding, Hunt and Liddy Special Project No. One, Project Odessa, Project "O", E. Howard Hunt, Jr., and G. Gordon Liddy, deposited in the Presidential files by or on behalf of each of the following individuals: John Ehrlichman, David Young, Egil Krogh, and Charles Colson. In connection herewith, identify the date or dates of deposit for each item deposited and the individual on whose behalf said records were deposited.

8. All records relating to the company known as Wagner and Baroody, Public Relations, 1100 17th Street, N.W., Washington, D. C. 20036, including the members, partners, directors, officers, shareholders or employees of said entity, including all records relating to Joseph Baroody in connection with a White House request for and delivery to the Executive Office Building of five thousand dollars (\$5,000) in cash between August 20, 1971, and September 3, 1971. In connection herewith, please furnish all records that reflect Joseph Baroody's visits, entries or admissions to the White House or Executive Office Building between August 20, 1971, and September 3, 1971.

Although I feel confident that these requests are framed with all the specificity necessary for a subpoena, I recognize that some of them may present problems of identification and retrieval depending upon the exact methods of filing and indexing. The problem could have been greatly simplified if you had felt able to agree to the kind of inventory of the papers left by various assistants to the President as proposed in my earlier letters. At this point perhaps the most convenient course -- provided that you are willing to make any disclosures -- would be for you to confer with William H. Merrill, one of my senior Associate Special Prosecutors. He can explain informally everything lying behind the specifications and perhaps could indicate what course you

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should follow after you explained any problems of retrieval. I would be glad to participate in the conference if this would be helpful.

I am aware that some of the papers to which we request access may be classified. In that event questions could arise later concerning whether they were to be submitted to a grand jury or used in a judicial proceeding. It would seem to me, however, that no national security considerations are pertinent at this stage. When Mr. Richardson appeared before the Senate Judiciary Committee as the President's nominee to the position of Attorney General, he gave both the Committee and myself his assurance that no papers would be withheld from me on grounds of national security, and that any questions concerning their use in judicial proceedings would have to be argued out in the manner followed whenever there was a difference of opinion between the Attorney General and other officials concerned with security and classification. Needless to add, I have received all the top clearances, as has Mr. Merrill.

Sincerely,



ARCHIBALD COX
Special Prosecutor

cc: Files
Chron
A. Cox ✓
H. Ruth
W. Merrill
C. Breyer
P. Bakes

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49. On Friday, September 28, 1973 the President decided to review the contents of the tapes which the Grand Jury and the Senate Select Committee had subpoenaed July 23, 1973 and directed General Haig to make the arrangements for such review commencing the following day at Camp David. The President asked his private secretary, Rose Mary Woods, to go to Camp David and to transcribe the contents of the subpoenaed tapes. Special Assistant to the President Stephen Bull was instructed to accompany Woods and to cue the tapes to particular conversations for her.

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49.1 Alexander Haig testimony, December 5, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 1936-37, 2005.....	608
49.2 John C. Bennett testimony, November 6, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 559-60.....	611
49.3 John Bennett notes, September 28, 1973, Exhibits 32-B and 32-C, <u>In re Grand Jury</u> , Misc. 47-73.....	613
49.4 Rose Mary Woods testimony, November 8, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 821-23, 838.....	615

turned out, the President did not do that and the next mention made to me of the tapes was on the 23th September when the President informed me that he was going to commence a review of the subpoenaed tapes.

Q General Haig - are you sure that it was the twenty eight? Might it have been the twenty seventh of September -- just state your best recollection.

A Well -- there was some discussion before a decision was made. It was Friday, I believe it was the 28th, when the President instructed me to prepare arrangements which would provide for his review and he explained to me how he was going to conduct that review that day.

Q So that he, if I understand your testimony, General Haig, he may have made some preliminary mention to you on September 27th but in any event, on September 28th he instructed you to make preparations for a review of certain designated tape recorded conversations --

A Yes.

Q By him - or on his behalf?

A That is correct.

Q Is that correct?

A That is correct.

Q And what did you do?

A I think it is best to explain first what arrangements the President wanted to follow --

Q That is what I have in mind.

A He told me he would have his private secretary, Miss Woods, summarize the highlights of the contents of the

tapes and that he would use Mr. Bull, his administrative assistant, to cue these tapes for Miss Woods - that is, to mark them in the reel, to facilitate her, her work.

It was decided that this would be done at Camp David over the weekend - or at least started then.

Do you want me to go on?

Q Yes -- please go on.

A I immediately notified General Bennett that this procedure would be followed and I told him that I would have the counsel provide him with a list of the tapes subpoenaed.

I very promptly called Mr. Bull in and I instructed him that he would perform the functions I have outlined for Miss Woods, and I called Mr. Buzhardt, the President's counsel, and asked him to furnish my office with a list of the tapes subpoenaed.

Q So far as you know were your instructions carried on by Mr. Bull and Mr. Buzhardt?

A Yes - I was told Friday afternoon by General Bennett that Mr. Buzhardt had delivered a list of the subpoenaed tapes to him - that he had assembled those tapes and placed them in his safe preparatory to a secure movement to Camp David the following morning, which would be Saturday, September 29th.

Q On September 29th, the following day, did you have a conversation with anyone with regard to these procedures that had been set in motion the previous day?

A Yes.

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Q And General Bennett continued to hold them and he does today?

A That is correct.

Q Now, with respect to the 28th of September. Do you recall the conversation which you had with the President setting up the circumstances by which Miss Woods would listen to various tapes?

A Yes, I discussed this with the President and, as I pointed out this morning, it was probably several discussions which culminated in the decision. But this was at a point in time when we were beginning to develop some concerns about continuing with the litigation associated with the tape issue. And on Friday -- and my memory is pretty finite there -- on Friday, the 28th, the President told me to set this up for the weekend at Camp David.

Q What was the purpose of this?

A The purpose of it was to establish a system through which the President personally could be appraised of the highlights of the contents of the tapes.

Q And for what purpose would that be conducted?

A A combination of purposes, I believe. One, in that particular milieu, to know essentially what was in them. It had been some time since April or May, but I can't presume to provide you or the Court what was in the President's mind.

Q I am just inquiring as to the conversations.

anything to do with the tapes.

At 2:15 in the afternoon Al Haig instructed me to pick up the list from Fred Buzhardt which would give me all of the tapes that had been requested either by the Senate Select Committee or by this Court.

He then said that I was to go and get those tapes and bring them over to Haig's office, and he said to me that the purpose of this, -- this is hearsay but I guess I can repeat it --?

THE COURT: We have gotten a lot of hearsay already.

THE WITNESS: Yes, sir.

THE COURT: We can stand a little bit more.

THE WITNESS: That Steve Bull and Rose Wood -- the indication was that the two of them would take these tapes the following weekend -- this was on a Friday -- to Camp David for the purpose of transcribing these tapes.

At two-twenty, five minutes later, I called Bull and -- I mean Fred Buzhardt -- and he said he would bring the list over immediately. He did, and there were two long legal sized mimeographed sheets which I think were the subpoenas that had been issued for the tapes.

I took those two lists and went alone to the vault at two thirty and I had to call the control center

to get into that and it took me from two thirty until three forty five to come to the proper tapes -- to open the safes and find that appeared to me to be the tapes that satisfied both subpoenas.

I then brought these tapes in a briefcase back to my office in the west wing of the White House.

Steve Bull came to my office and went over the tapes with the subpoenas to check, double check, that indeed these were satisfied as required, because I wanted to avoid his going to Camp David and not having the proper tapes.

At that time Steve Bull identified one tape which he was sure he would not need, and I took that tape, sealed it in a separate envelope with writing across the flap and tape over that and kept that in my safe.

The remainin twelve tapes were placed in a brief case which belonged to Mr. Bull and I placed this in my safe and gave Steve Bull the combination to my safe so that when he decided to leave , early in the morning, he would have access to this three combination safe and those tapes.

That ended the transaction on that day - that was a Friday evening.

May I continue, because I go on to the next day.

Q Go ahead.

A On the Saturday evening at six fifteen I received

28 Sep 73 32-B

2:15 p.m.

Harg said got list
from Bugandt (he called
him) of all tapes requested
by Comm. and Cox.

- Then go get them
& bring to H's office

- SB & RW to CD to
transcribe.

2:20 - I called B and
he said he would bring
list over at 2:30
(over)

2:30 - entered

3:45 - locked, returned
to office

See w/ Bull

Tapes in my safe, taken by
Bull to C.D. morning of
29 Sep.

Eve (6:15) 29 Sep opened
room & extracted one additional
tape for 15 Apr 73, personally
delivered to Bull at C.D.
at 8:00 p.m.

Morning Oct 1 tapes (13) in
RW's safe till further notice

(REVERSE SIDE
OF CARD)

32-C

Inventory

24 Sep

EOB 6/14/72 - 6/20/72
~~EOB 5/25/72 - 6/23/72~~ 10/11 vault 31 Oct
~~EOB 6/10/72 - 6/24/72~~ 10/11 "
EOB 6/30/72
Oval 9/15/72
Oval 3/13/73
Oval 3/4/73
EOB 3/20/73 - 3/28/73
EOB 3/21/73 - 3/23/73
~~EOB 4/1/73 - 4/16/73~~ 10/11 "
~~EOB 2/28/73~~
~~X 4/28 - 3/20/73~~ 10/11 "
To Bull

3/28/73 - extra - (my safe) vault 31 Oct

15 Apr 73 to Bull 8:00 p.m. 29 Sep at C.D.

~~Sat night tape - 15 Apr returned~~ 10/11
vault 31 Oct

Total of 6 tapes
returned to vault
31 Oct. B

32-C

4th?

A No, I didn't.

Q Did you --

A -- I would have to go back and ask who he even saw.

Q I just want to know your personal knowledge, what you
can recall.

A No, I don't know what he was doing on June the 4th.

Q You had no discussions with Mr. Bull concerning the
President listening to certain tapes?

A Recently I did.

Q When was that?

A Heavens, I haven't the slightest idea.

Q Was it since this hearing began?

A When did this hearing begin?

Q Last week.

A No, it was before that. It was at Camp David when we
took the tapes up.

Q In September?

A September 29th, yes.

Q What was your discussion before going to Camp David,
who did you talk to on Friday, the 26th of September?

A The President.

Q What did he tell you?

A He asked me if I could come to Camp David to do a

run off and would I mind doing it; and I said, of course not, and I canceled my plans thinking, of course, I was going to get it all done that weekend.

Q When did that conversation occur?

A When, what time of day? I haven't any idea. Probably mid- to late afternoon, but that I would not swear to. I just have no recollection.

Q Was that the first time the President ever mentioned the tapes to you?

A I don't remember ever discussing tapes with him before. Whether I was in a room and anybody said anything about it, I don't recall.

Q Anything particularly addressed to you?

A Oh, that was the first time he particularly addressed anything about the tapes to me himself, yes.

Q Did he describe to you how you would get the tapes?

A He told me that Steve Bull and/or Al Haig would take care of all the other problems, all I had to do was be present.

Q Did he tell you what tapes he was interested in?

A The ones that had been subpoenaed.

Q By whom?

A Well, so as I understand that have been subpoenaed by -- I'm not quite sure of it, the Senate Committee and by the Grand Jury.

Q Did he tell you he wanted the gist of the entire

contents of those tapes or just of the particularized conversations?

A Not the entire -- you mean the entire contents of the whole tape?

Q Yes.

A Just the conversations subpoenaed.

Q Did he explain to you the tapes included more than one conversation that was subpoenaed?

A He didn't explain that to me but Steve Bull marked the beginning of those for me.

Q In what manner did he do that?

A Well, by taking the log of any day and knowing what you are looking for you know pretty much how far you have to go into the tape to pick up the voices of the men you want to hear, you don't listen to the whole tape.

Q Now, did Mr. Bull give the tape up for you?

A Mr. Bull put a piece of paper, fastened it down, and he was in a separate room.

Q Let me explain what I mean. Did he actually bring you a tape on a machine already set so all you had to do was switch it on so you could hear exactly the conversation you were interested in?

A The first one he brought to me and put on the machine.

Q He put it on the machine in your presence?

you that he could not find any tapes or any --

A Mr. Bull, I believe, has testified, I don't know who he called, General Bennett or somebody else, because he could not find the fifteenth one.

Q I asked you what he told you at Camp David.

A After he called then he told me he called to see if he could find another one for the 15th, yes.

Q Are you aware of another tape having been delivered?

A I am aware of another tape having been delivered that also ran out before they got to the 9:15 or 10:00 or some kind of meeting, yes, ma'am.

Q You said you were told to get the gist of each conversation?

A That is right. By the gist, get everything I possibly could because as you told me the President listened you said on June the 4th, I don't know when, he said he understood how difficult it would be and I would not be able to get every word but get the highlights or gist of it.

Q Did he say get the gist of it or get every word?

A Do my best to get the most important words, sure.

Q And did you have any way of knowing which particular conversations you were looking for other than Mr. Bull having set these up?

A At that time we had one list with us of the subpoena.

50. On September 29, 1973 Rose Mary Woods and Stephen Bull took between eight and twelve tapes and three Sony tape recorders to Camp David. Haig has testified that on September 29, 1973 he telephoned Bull at Camp David and that Bull stated that he was having difficulty matching up conversations on the reel with the first item on the subpoena. Haig has testified that he then telephoned Buzhardt who informed Haig that only the conversation between the President and Ehrlichman was demanded by the subpoena of the June 20, 1972 EOB tape and that the subpoena did not include the conversation between the President and Haldeman. Haig has testified that at approximately 10:10 a.m. he telephoned Rose Mary Woods and told her that the President's conversation with Haldeman was not included in the subpoena. Woods typed this information on a note to Bull.

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tapes and that he would use Mr. Bull, his Administrative assistant, to cue these tapes for Miss Woods - that is, to mark them in the reel, to facilitate her, her work.

It was decided that this would be done at Camp David over the weekend - or at least started then.

Do you want me to go on?

Q Yes -- please go on.

A I immediately notified General Bennett that this procedure would be followed and I told him that I would have the counsel provide him with a list of the tapes subpoenaed.

I very promptly called Mr. Bull in and I instructed him that he would perform the functions I have outlined for Miss Woods, and I called Mr. Buzhardt, the President's counsel, and asked him to furnish my office with a list of the tapes subpoenaed.

Q So far as you know were your instructions carried on by Mr. Bull and Mr. Buzhardt?

A Yes - I was told Friday afternoon by General Bennett that Mr. Buzhardt had delivered a list of the subpoenaed tapes to him - that he had assembled those tapes and placed them in his safe preparatory to a secure movement to Camp David the following morning, which would be Saturday, September 29th.

Q On September 29th, the following day, did you have a conversation with anyone with regard to these procedures that had been set in motion the previous day?

A Yes.

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Q What was that conversation General Haig, and
with whom?

A It was about nine-ten on Saturday, in the
morning, I called Camp David to see if Mr. Bull and Miss Woods
had arrived. They had not.

I called again at approximately ten minutes of ten
and Mr. Bull answered the phone. He and Miss Woods were in a
cabin setting up to do this job, and during that telephone
conversation Mr. Bull said to me that he was having difficulty
matching up conversations on the reel with the first item
on the subpoena.

He pointed out that he could not find a meeting
which included the President, Mr. Haldeman and Mr. Erlichman [sic]
in a simultaneous session. I told him that I would check right
away with the counsel.

Q And did you do so?

A Well when I hung up, Mr. Buzhardt had a call
in to me about another matter, and I raised this problem
with him that Mr. Bull had raised with me and Mr. Buzhardt
explained that - something along the following lines:
That the first subpoenaed item, that Prosecutor Cox was
mistaken about or confused about, and that what was really
requested by the Prosecutor was a meeting between the
President and Mr. Erlichman [sic] that ran approximately
from ten twenty five to eleven twenty on the twentieth of June.

When I completed my discussion with Mr. Buzhardt
and then placed a call to Camp David to Mr. Bull.

Q And did you reach Mr. Bull?

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A No -- Miss Woods picked up the phone since they were both [sic] in the same room, and I gave this message to Miss Woods precisely as I had received it from Mr. Buzhardt and I asked her to inform Mr. Bull of that fact.

Q May I read to you from exhibit 62 and it is quite brief, Your Honor --

MR. BEN VENISTE: I will object to any reading from an exhibit, Your Honor --

MR. GARMENT: All right. I will withdraw that.

MR. BEN VENISTE: Unless there is a pending question and some of his recollection needs to be refreshed.

THE COURT: What is the exhibit about?

MR. GARMENT: This is a note that Miss Woods typed after her discussion, or in the course of her discussion, with General Haig, Your Honor, and I was going to ask General Haig whether this was generally in accordance with his recollection of this conversation.

THE COURT: I don't see any conflict there - I will let him read it.

BY MR. GARMENT:

Q Exhibit 62 reads as follows:

"Cox was a little bit confused in his request re meeting on June 20th -- "

MR. RHYNE: I am sorry but would Mr. Garment read it a little louder [sic]; I can't hear it.

MR. GARMENT: I am sorry Mr. Rhyne.

"Cox was a little bit confused in his request re (R-E) meeting of June 20th - it says Haldeman-Erlichman[sic] meeting.

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"what he wants is segment on June 20 from 10:25 to
11:20 with John Erlichman [sic] alone."

And then in handwriting there is "10:10 am, September 29
1973" and in handwriting "Camp David."

Does that accord, General, with your recollection
of the conversation you had with Miss Woods?

A I would think that is essentially correct.
I couldn't vouch for the precise language.

Q Did there come a time, General Haig, when
you learned that there was an erasure or a gap in a portion
of one of the tapes that was the subject of the procedure
carried out at Camp David over the weekend of September
29th through 30th?

A Yes.

Q When was that and what did you learn?

A I believe that was the following Monday
which would have been October first, and I believe it occurred
early afternoon - and I was called to the President's office,
which is a normal procedure for me at that time of day, and
during the discussion I had with the President - which
ranged over a number of important items -- at the outset
he told me that Miss Woods had just been in his office
in some state of distress and that she had an accident as
she was reviewing the tape of a conversation which was the
conversation following a subpoenaed conversation, and
that there had been some confusion in her mind as to the
length of the meeting and the participants, and she had
been listening ahead and, as I recall, essentially the

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REDIRECT EXAMINATION

BY MR. BEN-VENISTE:

Q Mr. Buzhardt, did there come a time, sir, when you were contacted by someone from the White House staff around September of 1973 concerning whether a particular portion of a tape recorded conversation involving the President as one of the participants was called for by a subpoena issued by a Federal Grand Jury?

A Yes; but let me add, I do not believe this is the first time I had discussed it --

THE COURT: -- Can you increase the volume on the microphone, Mr. Clerk.

Try it again.

THE WITNESS: Yes. But this was not the first time which I had discussed the particular item of the subpoena.

BY MR. BEN-VENISTE:

Q Referring to a June 20 subpoenaed conversation which occurred in the Executive Office Building?

A Referring to the item covered by 1-A of the subpoena which says, meeting on June 20, 1972 in the President's Executive Office Building, EOB, office involving Messrs. Richard Nixon, John Ehrlichman, and H. R. Haldeman from 10:30 to noon-time approximately.

Q My question was whether there came a time in September around the end of the month when you had a conversation

with anyone about this?

A Yes.

Q With whom did you have such a conversation?

A I believe with General Haig.

Q Where did the conversation take place?

A I believe it was on the telephone.

Q Where were you at the time?

A I don't recall.

Q Were you in Washington?

A Yes, I think so.

Q Do you recall whether you were at home or at the office?

A I was probably at the office.

Q Do you recall what day of the week that was?

A No. Let me say, there was probably more than one conversation, as I recall, I talked to him perhaps on a Friday and perhaps again on a Saturday.

Q First on Friday?

A I am not sure about this specific item, but I talked to him more than once.

Q What was the date?

A I believe it was the 28th and 29th of September.

Q Now, how are you able to pinpoint those dates,

Mr. Buzhardt?

A I went back and checked General Haig's telephone logs.

A Yes, probably. I knew that the President did intend to review the tapes. I am not sure I knew precisely when. I am not sure I knew that but I presumed I did.

Q What do you recollect about this conversation you had with General Haig on the 28th, if that was the first day you had the conversation?

A If that was the date, and I believe it was, if my time coincides, I was asked for a list of the subpoenaed tapes which I provided. Subsequently --

Q -- Excuse me, did you say you provided a subpoena or a list?

A I provided a copy of the subpoena. Subsequently, --

Q -- Excuse me. Is that all that occurred in that conversation?

A Well, if that was the conversation, Mr. Ben-Veniste, I don't know whether there was something else said, some other matters or not.

Q Then you had another conversation?

A That is correct.

Q When did that occur?

A Probably on the next day.

Q You have any firm recollection of that?

A No. I have a firm recollection of being asked about the first item on the subpoena, 1-A.

Q Do you have a firm recollection that it was the next

day you had this conversation with General Haig, the day after you provided a copy of the subpoena?

A No, I don't specifically recall the time element.

Q Do you recall the circumstances of the conversation, was it face-to-face or on the telephone?

A I believe it was on the telephone.

Q Do you recall where you were?

A No.

Q Do you recall whether you called General Haig or he called you?

A No.

Q Do you recall the substance of the conversation?

A Yes. I was asked what specifically was covered by 1-A of the subpoena.

Q Was that the first thing that General Haig said to you?

A I don't recall, Mr. Ben-Veniste. Part of the conversation, or whether we were talking about that it came up in the course of the conversation. I just don't recall.

2)

Q Do you recall there was some inquiry by General Haig relating to people who were listening to the tape or some question of ambiguity which prefaced his question to you as to what was covered by 1-A?

A No, I don't remember the words of the conversation. I remember I did have an inquiry about what was covered by the

first item of the subpoena.

As I said before, it was not the first time that I had discussed item 1-A with anyone.

Q Let's fix on the conversation you had with General Haig, then we can add whatever it is you want to add.

That conversation, would you give us the substance of the conversation to the best of your recollection?

A Well, there was an inquiry about what was covered by 1-A of the conversation --

Q -- Most respectfully, Mr. Buzhardt, could you say who made the inquiry, what was said to your best recollection?

A To the best of my recollection, the inquiry came from General Haig.

Q What did he say?

A I don't remember his words, Mr. Ben-Veniste. He inquired about what was covered in the first item of the subpoena.

Q You don't recall in any greater detail than that whether he said there is some question, we are experiencing some confusion, we are uncertain or any language like that?

A No.

Q And did he specify what the problem was?

A I don't recall.

Q What do you recall your telling General Haig?

A I remember telling him that the conversation covered

by the subpoena was the conversation between the President and Mr. Ehrlichman and that there was an error in assuming in the subpoena that Mr. Waldeman attended the meeting.

Q You told him that on the telephone?

A To the best of my recollection, yes.

Q And I assume you asked him for what purpose he was making this inquiry of you?

A I may have, perhaps I did not.

Q Do you recall?

A No.

Q Well, for example, if General Haig were to make some representation publicly to someone about a legal matter, I assume you would have wanted him to be precise and to have precise information at his disposal.

Wouldn't that be fair to assume?

A Well, I wouldn't judge that.

Q Pardon me?

A That is a matter of opinion anyhow, I don't know.

Q I am trying to refresh your recollection whether you asked General Haig why he wanted to know that?

A I don't recall asking him.

Q You advised him in substance all that was called for in the subpoena was for the conversation between the President and Mr. Ehrlichman on June 20?

A Yes.

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and beginning of the meeting between Mr. Maldeman and the President on June 20th.

Q That is the tape that you spent over 30 hours transcribing at Camp David and at the White House?

A That is right.

Q And I believe the machines are in Court that you used at Camp David, is that correct?

A The machine I used at Camp David and the machine I used at the office are both in Court.

MRS. VOLNER: I would like to introduce that. This is the tape machine which was used and perhaps Miss Woods can identify it after this is marked for identification.

THE DEPUTY CLERK: Exhibit No. 59 marked for identification.

MRS. VOLNER: Exhibit 59 is a gray case including a Sony four-speed servo-control machine and a set of ear phones.

[Whereupon, Exhibit No. 59 was
marked for identification.]

BY MRS. VOLNER:

Q Miss Woods, can you identify that machine?

A I can identify it as one of three that was there. I assume it is the one that I used.

Q You have any way of identifying this as the one

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you used?

A No, ma'am, I do not.

Q How many machines were at Camp David?

A Three.

Q Were they all Sony machines?

A All exactly alike.

Q How many did you use?

A I used one.

Q Did you check the serial numbers on these machines?

A No, ma'am, I did not. I never thought I was going
to need the serial number.

Q Was there any difference between the three machines

A No, there was not.

Q If this is not the exact machine you used, it is
the same type machine?

A Yes, ma'am.

Q Let me show it to you for closer inspection.

(Mrs. Volner takes exhibit to the witness.)

BY MRS. VOLNER:

Q Can you, by looking at that, be positive that the
machine is exactly the type that you used, if not the exact
machine?

A Yes, ma'am.

Q The buttons are in the same place?

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knew it was Waldeman because they were talking about scheduling.

Q How much of it did you listen to between Mr. Waldeman and the President?

A Again, I think I said couple of minutes. I think it is -- I would say two or three minutes, but I did not have a timer, I don't know the exact minutes.

Q Are you now saying you did not type anything from that portion of the conversation?

A I am saying I did not type the balance of that because I did not believe I had been told by the President that his counsel had told him that that portion of the tape was not subpoenaed.

Q Miss Woods, you have already identified subpoena as the grounds upon which you were typing these transcripts and the subpoena clearly identifies the conversations as one between the President, Mr. Ehrlichman, and Mr. Waldeman.

Why did you not type the portion involving Mr. Waldeman?

A Well, for several reasons: First reason is that all of us as far as I am concerned were convinced that the wording of the subpoena did not call for the conversation of each individual but only if they were all three there or some such technical thing.

I know we got a call at Camp David on Saturday

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morning from Al Naig telling us then, that part was not subpoenaed and he had been told that by our counsel.

Q Who did you discuss this with?

A Who did I discuss it with?

Q When you were at Camp David you said you spoke to Mr. Naig and determined that portion wasn't subpoenaed?

A I said Mr. Naig called me.

Q Why did Mr. Naig call you?

A So we wouldn't bother typing up something we didn't have to type.

Q When?

A I asked him to check that for me yesterday. It was September 29th at 10:10 a.m.

Q That was almost immediately after you arrived at Camp David?

A When I arrived.

Q Did you confer with anyone else concerning that portion of the conversation and whether it was or was not included in the subpoena?

A Yes, the President told me that the counsel had told him it was not subpoenaed.

4) Q Did you talk to Mr. Buzhardt yourself?

A No, I did not.

Q Was the President referring to Mr. Buzhardt?

A I assume he was. He used the term counsel. I

Rose Mary Woods testimony, In re Grand Jury,
November 26, 1973, 1257-1259

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Q Do you know who the technician was?

A I have no idea. I didn't see him. You know, it
was there when I arrived.

Q All right. Now, did you have any recollection of
General Haig calling you at 10:10 in the morning or of you
speaking to him at 10:10 regardless of who placed the call
before General Haig refreshed your recollection with his
records?

A I must say it was the other way around. I showed
General Haig the note I had taken on my piece of paper from
his telephone call. He did not remember what time he had
called me and he got his office staff to call me or he called
me back and gave me that.

Q Do you have a copy of your note with you?

A Yes, I do.

Q Is that the original?

A That is the original. There was no copy.

MRS. VOLNER: I would like to have this marked for
identification, please.

THE DEPUTY CLERK: Exhibit No. 62 marked for
identification.

(Government Exhibit No. 62 was
marked for identification.)

MR. RHYNE: Did you have the tape marked at all?

MRS. VOLNER: No, but I would like to. I would also

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Rose Mary Woods testimony, In re Grand Jury,
November 26, 1973, 1257-1259

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like to have the tape box marked which Miss Woods has read.

THE DEPUTY CLERK: Exhibit No. 63 marked for
identification.

(Government Exhibit No. 63
was marked for identification.)

MRS. VOLNER: 63 is the box which is a portion of the
June 12th tape.

BY MRS. VOLNER:

Q Miss Woods, when did you type this exhibit which is
No. 62 for identification?

A Saturday morning, September 29th.

Q How soon after your conversation?

A Immediately.

Q I can't hear you, I am sorry?

A Immediately.

Q And does it refresh your recollection as to whether
you called him or he called you?

A No, it does not. His office would be able to tell
you, I assume. I would assume he did because I had no reason
to call him and ask him the question. That is an assumption
and I am not trying to swear to that.

Q When was the handwritten portion added to this note
or was that done at the same time?

A No. That was added either Friday or Saturday of this
week when I asked General Haig about when he called me.

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Rose Mary Woods testimony, In re Grand Jury,
November 26, 1973, 1257-59

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Q And where was this note kept from the time you typed
it on September 29th?

A In a folder in my safe.

Q Along with the tapes?

A Along with the tapes and along with anything that had
to do with the tapes.

Q You say you took this from a folder, which you had
on the podium until Mr. Rhyne removed it, is that correct?

A That is right.

Q And has that folder been kept together with this
document in your safe?

A I think most of it was there.

Q Could you check?

A I have a couple of notes of people who called me
yesterday that I dropped in here.

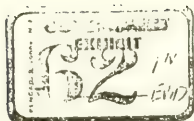
THE COURT: Excuse me. Have you finished with that
note?

MR. RHYNE: Could I have the last question read?

[Last two questions and answers read by the
reporter.]

THE WITNESS: Yes, I have checked. I have removed
the things that were not in that safe. There were notes of
people who called me last night and today on different things
that have nothing to do with this. Here is the note that was
made up by Steve Bull. Here are his notes from -- I know

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Cox was a little bit confused in his request re the meeting on June 20th. It says Ehrlichman Haldeman meeting -- what he wants is the segment on June 20 from 10:25 to 11:20 with John Ehrlichman alone.

Al Haig

10:10 AM Sept. 29 2, 1973

(Camp David)

of how the system was installed or how it worked or anything of that nature?

A No technical knowledge at all.

Q When did you first see any one of these tapes of any such telephone conversations or an audio pick-up?

A September 29th.

Q Of 1973?

A Of 1973.

Q Where was that?

A That was at Camp David when I went up there to try to listen -- I use that word advisedly, try -- and take down as much as possible, as much as was audible of some of the conversations which had been subpoenaed.

Q Now, the --

THE COURT: Excuse me. Can everybody hear Miss Woods?

THE WITNESS: I am sorry.

BY MR. POWERS:

Q You said of the tapes that were subpoenaed.

How many tapes did you have at Camp David at that time, Miss Woods?

A Eight tapes.

Q And what type of equipment did you use to attempt to listen to the tapes and take off as much of the substance as you could?

A Well, I think the make was a Sony, I am not sure, but

it was a black machine. It did not have a foot peddle, it had oversized ear things to hear from. It was a very difficult job, one which I would not like to take for a lifetime work.

Q Why did you undertake this task at that particular time?

A Because the President asked me if I would be available for a special task and, of course, I would always do it.

Q Who else was at Camp David on that particular occasion?

A Steve Bull and I drove up in the morning on Saturday, the 29th, took the tapes and three machines with us. The President, and I have forgotten what members of his family, came up later as he had a busy morning with appointments and he came up Saturday afternoon.

I don't know whether General Haig came that weekend.

I don't know who the other guests or people were at Camp David.

Q How long did you work on the tapes that weekend?

A Well, let's see -- Saturday night I worked until 3:00 o'clock Sunday morning, as a matter of fact. I got back up again at 6:00 o'clock. I worked all day Sunday and the Nixons were kind enough to ask me for dinner. I had dinner with them and we came back to Washington.

Q Sunday evening?

A That was Sunday evening.

I had gone up thinking I could finish everything within one weekend and came back without even one being finished.

Q Did you have occasion to look at the tapes in the briefcase that weekend?

A To look at them?

Q Yes.

THE COURT: Mrs. Volner, have we been over this enough now, this part of the testimony?

MRS. VOLNER: Your Honor, I am trying to establish who had the tapes, where they were, and what they were.

THE COURT: I don't want to stop you from inquiring. All right, let's try to speed this up a little.

BY MRS. VOLNER:

Q Did you look at those tapes?

A No, I had no reason to look at them, I was working on the other one. They are not really anything to just look at.

Q How many tapes were there?

A One more time -- eight.

Q How do you know there were eight?

A Because I --

THE COURT: Just a minute. Did you count the tapes?

She said how did you know there were eight.

THE WITNESS: I counted them.

THE COURT: Let's proceed.

THE WITNESS: Thank you, sir.

BY MRS. VOLNER:

Q Did Mr. Bull when he viewed up these tapes report to

Q On the way to Camp David did you have any discussion with Mr. Bull about your assigned task?

A No, we did not because we had a driver. We did not discuss it at all. I read my morning news summary all the way up.

Q You did discuss the quality of the tape?

A No, we didn't discuss tapes at all because when we went up we had a White House driver with us and this was supposedly something that was supposed to be between Steve Bull, the President, and I don't know who else, and myself.

Q Had you counted the tapes before you left for Camp David?

A Yes, ma'am.

Q Where did you count them?

A In Steve Bull's office.

Q When was that?

A Saturday morning before we left.

Q Did you know you were working from original tapes?

A As I must explain again, I can only assume they are original. I am not a technician and I wouldn't know an original from anything else.

Q During the time you were at Camp David did you have any discussions with anybody concerning either the -- let's start with the accountability of the tapes?

A Yes, the President.

Q Were you present when Mr. Bull related that fact to the President?

A I don't believe I was. I don't remember anyway. I think he told me that separately.

Q Do you know whether Mr. Bull did tell the President?

A I couldn't tell you whether he told him. I don't really know whether he told him or not, I can't remember that.

Q Did you discuss it with the President?

A Whether we discussed the 15th tape, I don't remember. I may well have because Steve told me but I don't remember that. We discussed the telephone one that was missing because of the fact that he would have been in the residence and very likely in the West Wing where there was no recorder or tape or whatever they are called.

Q Did you know Mr. Bull had gotten 13 tapes from General Bennett to bring to Camp David?

A No, I do not.

Q You don't know what happened to the other tapes?

A No, I only saw eight.

Q And you have not returned those eight tapes to Mr. Bennett or Mr. Bull?

A No, I mentioned -- Mr. Bull wouldn't get them, I believe General Bennett has that responsibility and I asked, I don't remember whether General Haig or Mr. Buzhardt, whether I should keep them in the safe or return them since they had been

Mr. Bennett he indicated which boxes corresponded to the line entries on this list.

Q Is this a written or printed list, or typed list?

A This was what I believe to be a xerox copy or some facsimile copy of the two subpoenas, the listing of the Senate subpoenaed tapes and the Cox Committee, so there were two copies of subpoenas I believe that was what they were.

Q Two copies of subpoenas?

A One copy of each subpoena.

Q And you had a tape corresponding to some entry on each of the subpoenas?

A Yes. If you will note on that box, one of those exhibits, 5 or 6, there is the letter (1), and that corresponded as I recall to an entry on -- let's see, that is an April 15th tape. So that would only be the Cox Committee because the Senate Committee didn't consider it important enough to subpoena.

Q Were you present when there was any inventory made with respect to the removal of the tapes?

A No, I was not. I don't know if any inventory had been made and I don't know from where it was removed.

Q Were you present when the tapes were returned?

A Returned to the storage area, you mean?

Q To whom did you return the tapes that you had received from General Bennett and Haig?

A I said that I -- let me clear this up. I received the

tapes from John Bennett. I received the instructions from General Haig. I returned some tapes, including those that you have there, I believe (indicating two exhibits).

Q That is that I have where?

A Those two boxes you have there, Exhibits 5 and 6.

I believe I returned them perhaps the Monday after that Camp David weekend. The remainder were with the President and his personal secretary.

Q The remainder of the tapes were not returned by you?

A That is correct.

Q Do you know who returned them? If anyone?

A No, I do not.

THE COURT: Let me see if I follow you. You returned certain tapes, you said. To whom, after you done something with them, listened to them? And how many did you return of the original number that you had?

THE WITNESS: Your Honor, originally I received approximately one dozen tapes.

THE COURT: Did you return all of them to the same party from whom you received them?

THE WITNESS: I did not return all of them, no, sir.

THE COURT: How many did you return?

THE WITNESS: Approximately four or five, sir.

THE COURT: To whom did those four or five go?

THE WITNESS: Returned them to John Bennett, Your Honor.

Q Did you ever see the product of her typing?

A No, sir.

I would like to make one point just to clarify it:
It has been a couple of weeks since I seen the tapes. I do not
know where they are now. They may still be in Miss Woods'
possession, they may have been returned to Mr. Bennett --

THE COURT: -- May I suggest at this time as long as
we are going into this matter in great detail that someone get
word to Miss Woods that she will be called as a witness in this
case?

MR. PARKER: Yes, Your Honor.

THE COURT: Very well.

BY MR. BEN-VENISTE:

Q Now, you got to Camp David carrying these tapes and
tape recorders, is that correct?

A Yes, sir.

Q With whom did you go?

A I went with Miss Woods.

Q How did you get there?

A We drove in a White House car.

Q Who was at Camp David at that time aside from the
President?

A When we arrived the President had not yet arrived.
He arrived shortly after we had. No one else was there other
than Camp David personnel.

28 Sep 73 32-B

2:15 p.m.

Haz said get list
from Bugardt (he called
him) of all tapes requested
by Comm. and Cox.

- Then go get them
to bring to H's office

- SB + RW to CD to
transcribe.

2:20 - I called B and
he said he would bring
list over at 2:30
(over)

2:30 - entered
3:45 - locked, returned
to office

2:40 w/ Bull

Tapes in my safe, taken by
Bull to C.D. morning of
29 Sep.

Eve (6:15) 29 Sep opened
room & extracted one additional
tape for 15 Apr 73, personally
delivered to Bull at C.D.
at 8:00 p.m.

Morning 1 Oct a tape (13) in
RW's safe till further notice.

(REVERSE SIDE
OF CARD)

32-C

Inventory

26 Sep

EOB 6/14/72 - 6/20/72

~~Tel 5/25/72 - 6/23/72 10/11 vault 31 Oct~~

~~EOB 6/20/72 - 6/29/72 10/11 "~~

EOB 6/30/72

oral 9/15/72

oral 3/13/73

oral 3/21/73

EOB 3/20/73 - 3/28/73

EOB 3/21/73 - 3/27/73

~~EOB 4/1/73 - 4/16/73 10/11 "~~

EOB 2/28/73

~~X 4/28 - 3/20/73 10/11 "~~

To Bull

3/28/73 - extra

my size

vault 31 Oct

15 Apr 73 to Bull 8:00 p.m. 29 Sep at C.D.

~~Sat night tape - 15 Apr returned 10/11 vault 31 Oct~~

Total of 6 tapes
returned to vault on
31 Oct. 15

32-C

EXHIBIT NUMBER	DESCRIPTION AND REMARKS	EXHIBITS INTRODUCED DURING HEARING TO ASCERTAIN CO-101 EXISTENCE AND/OR NON EXISTENCE OF TAPES COVERING REP 1/71 TELEPHONE CONVERSATION BY PRESIDENT WITH JOHN MITCHELL ON JUNE 20, 1972, & MEETING WITH JOHN MITCHELL DEAN III ON APRIL 15, 1973.)			WITNESS
		MAILED FOR IDENTIFICATION	RECEIVED INTO EVIDENCE		
52 ✓	Photo copy of letter dated June 11, 1973, from Archibald Cox, Special Prosecutor to J Fred Buzhardt, Counsel to the President, in re meetings of Richard M. Petersen & Dean with President.	11-9-73	11-9-73	Buzhardt	
53 ✓	Photo copy of letter dated June 16, 1973, from J Fred Buzhardt, Special Counsel to the President, which answers Mr Cox' letter of June 11, 1973.	11-9-73	11-9-73	Buzhardt	
54 ✓	Photo copy of letter dated July 20, 1973, from Archibald Cox, Special, Prosecutor to J Fred Buzhardt, Counsel to the President, informing Mr Buzhardt of requested tape recordings & specific conversations, etc.	11-12-73	11-12-73	Buzhardt	
55 ✓	Photo copy of letter dated 25 July 1973 from J Fred Buzhardt, Special Counsel to the President, answering Mr Cox' letter of July 20th.	11-12-73	11-12-73	Buzhardt	
56 ✓	Photo copy of letter dated July 23, 1973, from President Nixon to Mr. Cox.	11-12-73	11-12-73	Buzhardt	
57 ✓	Photo copy of Text of President Nixon's Aug. 22 New Conference.	11-12-73	11-12-73	Buzhardt	
58 ✓	Photo copy of Washington Post Newspaper Item of 11-1-73 entitled, "Key Mitchell, Tapes Don't Exist, Sirica Told by White House Counsel."	11-12-73	11-12-73	Buzhardt	
59 ✓	Black and/or dark gray carrying case containing a Sony, 4 speed/servocontrol tape recorder, Model TC-607B, Serial #22373, together with a pair of black Sony earphones, bearing manufacturer's numbers DR-74 (similar to ones worn by airplane flying personnel). This tape recorder (Sony #22343) was hand-carried into Court by Rose Mary Woods on Nov. 26, 1973, and was turned over to Richard A Hauser, White House Counsel, on Dec. 4, 1973, for return to the White House, & another Sony tape recorder, Model TC-800B, Serial #14423, substituted therefor as Exhibit #79. The return of Sony #22343 to the White House & the substitution of Sony #14423 as Exhibit #79 was done pursuant to a motion made by Jean M Volne, Asst Watergate Prosecutor, at the bench on Nov. 29, 1973. (See transcript of proceedings and/or docket & jacket entitled made by Clerk for that date; see also receipt obtained from Mr Hauser for Sony #22343, filed Dec. 4, 1973.)	11-26-73	11-26-73	Woods	

51. Woods has testified that during the weekend of September 29-30, 1973 she spent twenty-nine hours transcribing the June 20 EOB tape, but that she was unable to complete the tape. She has also testified that while she was transcribing the tape the President came into the cabin where she was working and listened to a portion of the tape for five to ten minutes, that he pushed the buttons on her recorder back and forth manipulating the tape and that he commented that he heard two or three voices. Bull has testified that he was unable to find recordings of the President's June 20, 1972 telephone conversation with Mitchell or his April 15, 1973 meeting with Dean and that he discussed this with the President and Woods while they were at Camp David.

	Page
51.1 Rose Mary Woods testimony, November 8, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 802-03, 827-34, 839-40.....	650
51.2 Rose Mary Woods testimony, November 26, 1973, <u>In re Grand Jury</u> , Misc. 37-73, 1234-36, 1321-22.....	662
51.3 Subpoena, July 23, 1973, Exhibit 27, <u>In re</u> <u>Grand Jury</u> , Misc. 47-73.....	667
51.4 President Nixon daily diary, September 29, 1973, Exhibit 115, <u>In re Grand Jury</u> , Misc. 47-73.....	669
51.5 Stephen Bull testimony, November 2, 1973, <u>In re</u> <u>Grand Jury</u> , Misc. 47-73, 355-61, 363.....	672
51.6 Stephen Bull testimony, November 6, 1973, <u>In re</u> <u>Grand Jury</u> , Misc. 47-73, 465-70.....	680

of how the system was installed or how it worked or anything of that nature?

A No technical knowledge at all.

Q When did you first see any one of these tapes of any such telephone conversations or an audio pick-up?

A September 29th.

Q Of 1973?

A Of 1973.

Q Where was that?

A That was at Camp David when I went up there to try to listen -- I use that word advisedly, try -- and take down as much as possible, as much as was audible of some of the conversations which had been subpoenaed.

Q Now, the --

THE COURT: Excuse me. Can everybody hear Miss Woods?

THE WITNESS: I am sorry.

BY MR. POWERS:

Q You said of the tapes that were subpoenaed.

How many tapes did you have at Camp David at that time, Miss Woods?

A Eight tapes.

Q And what type of equipment did you use to attempt to listen to the tapes and take off as much of the substance as you could?

A Well, I think the make was a Sony, I am not sure, but

it was a black machine. It did not have a foot peddle, it had oversized ear things to hear from. It was a very difficult job, one which I would not like to take for a lifetime work.

Q Why did you undertake this task at that particular time?

A Because the President asked me if I would be available for a special task and, of course, I would always do it.

Q Who else was at Camp David on that particular occasion?

A Steve Bull and I drove up in the morning on Saturday, the 29th, took the tapes and three machines with us. The President, and I have forgotten what members of his family, came up later as he had a busy morning with appointments and he came up Saturday afternoon.

I don't know whether General Haig came that weekend. I don't know who the other guests or people were at Camp David.

Q How long did you work on the tapes that weekend?

A Well, let's see -- Saturday night I worked until 3:00 o'clock Sunday morning, as a matter of fact. I got back up again at 6:00 o'clock. I worked all day Sunday and the Nixons were kind enough to ask me for dinner. I had dinner with them and we came back to Washington.

Q Sunday evening?

A That was Sunday evening.

I had gone up thinking I could finish everything within one weekend and came back without even one being finished.

believe I am so stupid that they had to go over it and over it. I was told if you push that button it will erase and I do know even on a small machine you can dictate over something and that removes it and I think I used every possible precaution to not do that.

Q What precaution specifically did you take to avoid either recording over it, thereby getting rid of what was already there?

A What precautions? I used my head. It is the only one I had to use.

Q You said you listened that day starting at about what time?

A On Saturday, the 29th, we left the White House at 8:15, probably arrived there about an hour and a half drive, I think, probably started I would say 11:00 o'clock.

Q 11:00 o'clock. And how long did you work that day?

A Until 3:00 a.m. Sunday morning.

Q And how many breaks did you take?

A I didn't take any. I had them deliver my lunch. As I say, I had big ideas as I thought I was going to finish the job over the weekend.

Q You worked approximately 16 hours?

A That is right. That is not unusual, I expect.

Q You went to bed you said at 3:00 a.m. and arose at 6:00 a.m.?

A Right.

Q Did you continue working on the same reel?

A That is right, I put it back on.

Q How long did you work on it starting at 8:00 a.m.?

A I worked until approximately, I would say 4:30 or quarter to 5:00 when the Nixons called and invited me to come for dinner and said we would go -- I do not even remember whether we saw a show, I was so exhausted and tired of hearing that thing that we were finished and packed all this up and again, the tapes and the machine and everything stayed with Steve Bull.

Q Had you completed the tape? You had now worked for approximately 29 hours.

A I had not completed the first tape.

Q What was that tape you were working on?

A That was the tape of the -- I don't even remember the date, but it was the first one on the list. It was a very dull tape, frankly.

Q Which list was the first one on?

A On the subpoena -- are they both the same? I don't really know because that is out of my range of activity --

MR. POWERS: On the subpoena --

MRS. VOLNER: The witness should testify.

MR. POWERS: Just one minute --

MR. BELMONT: I object to that. Your Honor.

THE COURT: Gentlemen, I am not going to have any argument this morning. Let's proceed. I would suggest let the witness testify.

MRS. VOLNER: Thankyou, Your Honor.

BY MRS. VOLNER:

Q Miss Woods, you worked with this tape for 29 hours.

Who was the conversation between?

A It was between the President and Ehrlichman, chiefly, and Haldeman briefly. And it was on all sorts of things, I don't remember --

THE COURT: -- Try not to get into the substance of what is on the tape. It is all right to mention tapes but not to mention what was in it at this time anyway.

MRS. VOLNER: I am just trying to pin down what tape it was.

THE COURT: I understand.

BY MRS. VOLNER:

Q What office was it located in?

A I could not tell you that, I do not remember.

Q Did it come out of a tape box?

A Of course it came out of a tape box, but I don't know which office it was.

Q The boxes, we have testimony, contained information as to the location.

A On the back of them. I looked at 16 of them. that was

September 29th, I do not know which room it is. I don't have the log in front of me, you may have the President's log which would probably tell you that, I don't.

Q Do you recall how long the meeting lasted, what the duration was?

A No, I don't. That wasn't any of my concern, I was just trying to get the job done. It seemed to me as though it lasted months but it obviously was probably, it must have been a two-or-three hour meeting. I would have to look that up or ask somebody else to, I don't have the President's log except for that one day.

Q Do you have any record of what you typed on what day?

A No, I do not.

Q How did you head up each page that you were typing?

A I headed it up with the day -- first, the date --

Q The date of what?

A Of the meeting. Then the office. Then the participants. And that was on each page. But I simply do not remember which meeting was in which office on any date.

Q Exhibit 27 in evidence indicates that at least as to the subpoena from the Special Prosecutor the first item on that list is a meeting of June 20th in the President's Executive Office Building office involving Richard Nixon, John Ehrlichman, and H. R. Haldeman from 10:30 a.m. to noon.

Does that refresh your recollection?

A I believe that is exactly what I testified. I didn't tell you how long nor what room. I don't have any recollection. I have tried to explain to you I don't keep track of the President's moves, where he is meeting with people, and I certainly don't remember which room he met with Haldeman and Ehrlichman.

He was with them a great part of the time but I don't know where.

Q Miss Woods, that wasn't the question. The question was: What conversation was it that you were working on for over 29 hours and I am asking you if you cannot remember having typed a conversation and listened to a tape for over 29 hours --

A -- I believe the Judge asked me not to discuss the conversation.

Q I am not asking --

THE COURT: -- It is all right to identify the parties. I can't see objection to that, but what we want to be careful about, Miss Woods, as you know the Court has not ruled on the admissibility of any part of these tapes or anything and as you know, you probably know I have not heard them, I expect to in due course but we want to be careful to follow the ruling of our Court of Appeals which are the guidelines to me.

So with that in mind, I am not going to permit any statement about what is on these tapes, but the President said to Mr. Dean or Mr. Haldeman or anything like that at this time.

All right.

THE WITNESS: Well, I think I answered your other question. There was the President, John Ehrlichman, and Bob Haldeman.

BY MRS. VOLNER:

Q You haven't told me the date of that.

A I have told you I don't remember. I really do not. And I think if you had sat and typed that long and then came back and tried to take calls in between you wouldn't remember the dates of those tapes either.

Q How many hours do you think you worked on that particular tape following the 29 hours at Camp David?

A Probably two, maybe two and a half.

Q Was that --

A -- That is how bad it was to get, yes. I tried to explain it was a very bad tape. It was very, very difficult and at Camp David I did not have a foot peddle where I could stop and keep on going, you had to stop and start and if you ever run one, maybe you haven't, but it takes one awful long time when you don't have a foot peddle for it.

Q The question is: After the 29 hours you worked at Camp David, you said you worked in your office at the White House on this same tape, is that correct?

A That is right.

Q How many hours did you work on that same tape in the

White House?

A That is what I just said, about two or two and a half hours.

Q Did that complete your work on that particular --

A -- That is right.

6) Q Now you spent over 30 hours on the tape. All I am asking you to recall is what the date of the tape is that you were working from?

A And I am telling you --

MR. POWERS: -- Excuse me, if Your Honor please --

THE WITNESS: -- I already told you I don't know.

THE COURT: Wait a minute, Miss. When there is objection or counsel stands up, I have to hear counsel.

MR. POWERS: I object to the repetition. We have been over this and she has tried to explain about the date and counsel has referred to the subpoenas.

THE COURT: Which one of the tapes are you referring to?

MRS. VOLTER: The Government's subpoena from the Special Prosecutor's office, Exhibit 27, indicates that the June 20th meeting in the EOB office was between the parties Miss Woods is testifying to.

THE COURT: What is your question that you wish to be put to the witness?

THE COURT: If she says she does not recall, I would go on to something else. All right.

BY MRS. VOLNER:

Q You did finish that particular tape at the White House?

A That is right.

Q When Mr. Bull originally gave you the tapes at Camp David did he give you a large group or one?

A I think as I previously testified he first brought one in on a machine. While I started that one he marked the others with a white piece of paper where they started, the particular conversation which was to be -- really, as I said before, it is not a transcript, it can't be every word. It is just not that good.

But he marked those and I had the tapes from then on except when he personally held them when I would go to dinner with the Nixons or somewhere, they were always under lock and key or guard.

Q Well, I am trying to get a little clearer understanding in my own mind.

You said on the first day you didn't take any breaks and you had the one tape in your possession, is that correct?

A That is right.

Q He didn't give you any additional tapes that day?

A He worked on the other tapes in the other room getting

Q On the way to Camp David did you have any discussion with Mr. Bull about your assigned task?

A No, we did not because we had a driver. We did not discuss it at all. I read my morning news summary all the way up.

Q You did discuss the quality of the tape?

A No, we didn't discuss tapes at all because when we went up we had a White House driver with us and this was supposedly something that was supposed to be between Steve Bull, the President, and I don't know who else, and myself.

Q Had you counted the tapes before you left for Camp David?

A Yes, ma'am.

Q Where did you count them?

A In Steve Bull's office.

Q When was that?

A Saturday morning before we left.

Q Did you know you were working from original tapes?

A As I must explain again, I can only assume they are original. I am not a technician and I wouldn't know an original from anything else.

Q During the time you were at Camp David did you have any discussions with anybody concerning either the -- let's start with the accountability of the tapes?

A Yes, the President.

Q What did you tell him?

A He came over and listened to them a little bit and said I am sorry this is such a terrible job.

Q Which one did he listen to?

A The one that I worked on up there.

Q When you said, then, you meant the one you worked on?

A That is right. Well, then, I meant by them the three of them and part of the time all three talking at once, not three tapes, three people.

Q I see, and did you discuss it with Mr. Bull?

A Oh, I probably did. I'm sure he heard my language part of the day because they were so bad, but I didn't discuss it, I just probably said it was pretty bad, pretty hard.

Q Was anybody in the room with you while you were typing?

A No, ma'am.

Q And you heard only the one tape?

A That is right. Up there.

Q Now, after you returned from Camp David who took the tapes back to the White House?

A Steve Bull and I took them in -- he carried them in for me because we had a machine in the same large size briefcase. I put them in the safe and locked them up and the safe is also checked every night by the security guard to be sure it is locked. They pull the handle to see.

Q So Sunday night they were placed in the safe?

1234

Q When was that explanation given to you?

A I haven't any idea.

Q Was it at the time General Haig spoke to you about not typing anything other than --

A I took the message from General Haig and decided, thank heavens I didn't have to type the rest of it, but I don't know who I discussed it with, or anyone.

Q That wasn't the question.

The question is: Was the explanation you said you got as to what was included in the subpoena?

A I don't remember when I got the explanation. I didn't need an explanation. I was just told to type what was marked.

Q You don't recall whether it was before or after you typed the conversation?

A No, I do not.

Q Was it as recently as the time you testified in this Court, November the 8th?

A When I testified in this Court on November the 8th, I was still under the impression that the Waldeman part of that tape was not subpoenaed.

Q So then you had that explanation prior to your testimony?

A Yes, na'am.

Q Now the portion that the President listened to at

1235

Camp David you said involved three voices?

A That is right, and as I mentioned I started with the Ehrlichman tape to type but the President moved the buttons back and forth to hear parts of the tape.

The day did not start with John Ehrlichman.

Q Did he listen through ear phones?

A I think he held one ear phone up. That is my recollection.

Q You could hear what the President was listening to?

A No, not when he held the ear phone up to his ear.

Q You did testify he heard a portion that involved three voices?

A Yes, he said he did.

Q He told you that?

A He said I don't see how you are getting anything of this, it is so bad.

Q What doesn't mention anything about three voices, Miss Woods.

A I said yes, he mentioned hearing two voices or three voices and he didn't see how I was getting any of it.

Q Did he say two or did he say three?

A My recollection is three.

Q And you could not hear what he was listening to?

A No, and I don't think you could if you had been in the room either.

Q Did he identify who the speakers were?

A No, there was no need for him to identify to me who was on the tape, it wasn't anything I had to do.

Q How long had the President listened to the tape?

A Just a few minutes, just to really, I think, understand how difficult the job was.

Q How long did he remain at your cabin at Camp David that particular day?

A I would say maybe five minutes.

Q Are you sure that is the full amount of time that he spent there?

A No, I am not sure. I said I would say about.

Q Could it have been as much as several hours?

A No, it was not several hours.

Q An hour?

A I don't think so.

Q What is your recollection?

A My recollection is between five and ten minutes while he listened. I would have to look at his log to find out.

Q Did the President not work with you in listening to these tapes?

A No, he did not. That is hardly his job.

Q And you say that the part that you listened to was approximately 55 minutes, that is what you testified to?

Do you know?

MR. GARRETT: I think Mr. Buchardt will be delivering them tomorrow.

MRS. VOLLMER: Fine. Thank you.

BY MRS. VOLLMER:

Q Did the President ask to listen to what you had done?

A No, he didn't.

Q Did he listen to the June 29th tape at any time other than on the 29th of September at Camp David?

A No.

Q Do you know that for a fact?

A He didn't listen to it in front of me. I don't know that for a fact, no.

Q But to your own personal knowledge he listened to it in front of you at Camp David?

A He listened to very small parts of it and maybe not even the Ehrlichman-Waldeman testimony, just the beginning to actually as I mentioned before sympathized with the terrible job I had.

Q You say he listened to several portions of it. What did he do, listen and push it forward?

A Yes.

Q Can you describe what he did?

A I believe I said this morning he held those big ear phones that goes to the other machine and listened to just two

or three parts and just skipped around.

Q On the 1st of October when you reported to him what was missing did he indicate to you he had already heard that portion?

A No, he did not.

Q Do you know how many portions of the tape he listened to on the 29th of September?

A How many portions? No. I don't even know, I have to look catalogs how long he was over there. He talked with Steve a few minutes, he talked with me, he listened and he sympathized on us having to do this job on a beautiful day, but he didn't listen to any long full tape.

Q Was there any discussion of Watergate while Haldean talked to the President during the time you listened to it?

A No, I have already testified to what I heard of Haldean's testimony on.

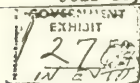
Q Was there any discussion of Watergate with Mr. Ehrlichman?

A I think the Judge will find that out when he receives the gist of it and has the tape.

HES. VOLMER: Your Honor, may the witness answer that question?

THE COURT: Is that the answer you want?

THE WITNESS: No, there was no talk of Watergate.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRAND JURY
SUBPOENA DUCES TECUM
Dated July 23, 1973

Schedule of Documents or
Objects to be Produced by
or on Behalf of Richard
M. Nixon:

1. All tapes and other electronic and/or mechanical
recordings or reproductions, and any memoranda, papers,
transcripts or other writings, relating to:

(a) Meeting of June 20, 1972, in the President's
Executive Office Building ("EOB") Office involving Richard
Nixon, John Ehrlichman and H. R. Haldeman from 10:30 a.m.
to noon (time approximate).

(b) Telephone conversation of June 20, 1972,
between Richard Nixon and John N. Mitchell from 6:08 to
6:12 p.m.

(c) Meeting of June 30, 1972, in the President's
EOB Office, involving Messrs. Nixon, Haldeman and Mitchell
from 12:55 to 2:10 p.m.

✓ (d) Meeting of September 15, 1972, in the Presi-
dent's Oval Office involving Mr. Nixon, Mr. Haldeman, and
John W. Dean III from 5:27 to 6:17 p.m.

Feb 27 ✓
Feb 28 (e) Meeting of March 13, 1973, in the President's ✓
Oval Office involving Messrs. Nixon, Dean and Haldeman
from 12:42 to 2:00 p.m.

✓ (f) Meeting of March 21, 1973, in the President's ✓
Oval Office involving Messrs. Nixon, Dean, and Haldeman
from 10:12 to 11:55 a.m.

✓ (g) Meeting of March 21, 1973, in the President's ✓
EOB Office from 5:20 to 6:01 p.m. involving Messrs. Nixon,

Dean, Ziegler, Haldeman and Ehrlichman.

✓ (h) Meeting of March 22, 1973, in the President's EOB Office from 1:57 to 3:43 p.m. involving Messrs. Nixon, Dean, Ehrlichman, Haldeman and Mitchell.

✓ (i) Meeting of April 15, 1973, in the President's EOB Office between Mr. Nixon and Mr. Dean from 9:17 to 10:12 p.m.

2. The original two paragraph memorandum from W. Richard Howard to Bruce Kehrli, dated March 30, 1972, concerning the termination of Howard Hunt as a consultant and transfer to "1701", signed "Dick," with handwriting on the top and bottom of the one-page memorandum indicating that it was placed there by Kehrli. (A copy of this memorandum was turned over to the Federal Bureau of Investigation on August 7, 1972, by James Rogers, Personnel Office, White House.)

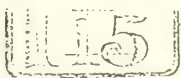
3. Original copies of all "Political Matters Memoranda" and all "tabs" or "attachments" thereto from Gordon Strachan to H. R. Haldeman between November 1, 1971, and November 7, 1972.

XXX

51.4 PRESIDENT NIXON DAILY DIARY, SEPTEMBER 29, 1973,
EXHIBIT 115, IN RE GRAND JURY, MISC. 47-73

PLS. PRINT NAME

THE WHITE HOUSE
WASHINGTON, D.C.



SEPTEMBER 29, 1973

TIME DAY
9:17 a.m. SATURDAY

TIME		PHONE		
		P	R	
		Lo	LD	
9:17				The President went to the Oval Office.
9:18		P		The President requested that his Assistant, Ronald L. Ziegler, join him.
9:19	9:36			The President met with Mr. Ziegler.
9:37	9:50			The President met with his Assistant, Alexander M. Haig, Jr.
9:52	10:06			The President met with his Counsellor, Bryce N. Harlow
10:07	10:53			The President met with: Senator Charles H. Percy (R-Illinois) Mr. Harlow White House photographer, in/out
10:11	10:14	P		The President talked long distance with Senator James B. Pearson (R-Kansas) in Topeka, Kansas.
10:54	10:59			The President met with Secretary of State Henry A. Kissinger.
11:03	12:07			The President met with: Willy Brandt, Chancellor of the Federal Republic of Germany
11:03	12:04			Berndt von Staden, Ambassador from the Federal Republic of Germany to the U.S.
11:03	12:04			Gunther van Vell, Political Director for the Ministry of Foreign Affairs of Germany
11:03	12:04			Secretary Kissinger
11:03	12:04			Brig. Gen. Brent G. Scowcroft, Deputy Assistant
				Members of the press, in/out
				White House photographer, in/out
12:07				The President and Chancellor Brandt went to the Rose Garden.
12:07	12:12			The President participated in a photo opportunity with: Chancellor Brandt Ambassador von Staden Mr. van Vell Secretary Kissinger Members of the press, in/out White House photographer, in/out
12:12				The President, accompanied by Secretary Kissinger, returned to the Oval Office.
12:12	12:14			The President met with Secretary Kissinger.
12:21	12:25			The President met with Secretary Kissinger.

51.4 PRESIDENT NIXON DAILY DIARY, SEPTEMBER 29, 1973, EXHIBIT 115,
IN RE GRAND JURY, MISC. 47-73

PRESIDENT RICHARD NIXON'S DAILY DIARY
(See Travel Record for Travel Activity)

DAY BEGAN

DATE (Mo., Day, Yr.)

SEPTEMBER 29, 1973

TIME DAY

12:26 p.m. SATURDAY

THE WHITE HOUSE
WASHINGTON, D.C.

TIME		PLANE NO. FROM TO		ACTIVITY
In	Out	In	Out	
12:26	12:45			The President met with Mr. Haig.
12:46	12:47	P		The President talked with the First Lady.
12:48	1:14			The President met with:
1:03	1:10			Mr. Harlow
1:09	1:10			Gerald L. Warren, Deputy Press Secretary
1:11	1:12			Mr. Ziegler
				Mr. Ziegler
1:10		P		The President requested that Mr. Ziegler join him.
1:15				The President went to the South Grounds of the White House.
1:19	1:50			The President flew by helicopter from the South Grounds of the White House to Camp David, Maryland. For a list of passengers, see APPENDIX "A."
1:51	1:53			The President and the First Lady motored from the Camp David helipad to Aspen Lodge.
1:56				The President went to Dogwood Cabin.
1:58	2:05			The President met with:
				Rose Mary Woods, Executive Assistant
				Stephen B. Bull, Special Assistant
2:05				The President returned to Aspen Lodge.
2:09	2:21	P		The President talked long distance with Mr. Haig in Washington, D.C.
2:23	2:36	P		The President talked long distance with his brother, F. Donald Nixon, in Arlington, Virginia.
3:27	3:28	P		The President talked with his Physician, Maj. Gen. Walter R. Tkach.
4:40		P		The President telephoned long distance to Mr. Ziegler in Washington, D.C. The call was not completed.
4:46	4:49	P		The President talked long distance with Mr. Ziegler in Washington, D.C.
6:19	6:50			The President met with Miss Woods.
6:24	6:26	P		The President talked with Mr. Bull.

51.4 PRESIDENT NIXON DAILY DIARY, SEPTEMBER 29, 1973,
EXHIBIT 115, IN RE GRAND JURY, MISC. 47-73

ORGAN

DATE (Mo., Day, Yr.)

THE WHITE HOUSE
WASHINGTON, D.C.

SEPTEMBER 29, 1973

TIME DAY

6:35 p.m. SATURDAY

TIME		PHONE		ACTIVITY
In	Out	From	To	
6:35			P	The President telephoned long distance to his Special Counsel, J. Fred Buzhardt, Jr., in Washington, D.C. The call was not completed.
6:42	6:53		P	The President talked long distance with Mr. Haig in Washington, D.C.
6:50	7:30			The President had dinner with: The First Lady Julie Eisenhower Miss Woods
6:54	7:02		P	The President talked long distance with Mr. Buzhardt in Washington, D.C.
7:30	7:35			The President met with Miss Woods.
8:24	10:05			The President saw the movie "Bang the Drum Slowly" with: The First Lady Julie Eisenhower
NF/SM/JD				

Q And were all of the tapes that you had furnished to Mr. Haldeman returned?

A As I recall, yes.

Q What was the next occasion on which you were furnished or had access to the tapes?

A I believe the next occasion was on September 29th of this year.

Q And who asked you to obtain the tapes at that time?

A General Haig.

Q What did General Haig say?

A General Haig indicated that the President wished to begin a review of certain conversations that had been requested either by the Senate Committee or the Cox Committee.

Q And what did you do pursuant to General Haig's request?

A I discussed this briefly with Mr. John Bennett, who provided me with some boxes containing tapes where, hopefully, the conversations would be contained.

Q Where did he provide them to you?

A In his office.

Q And where did you listen to the tapes, or did you listen to the tapes? Let me ask you that.

A I did not listen to the tapes.

Q What did you do with the tapes?

A The tapes were carried to Camp David where this review

process took place.

Q And to whom did you give them?

A I set up certain conversations, and, similar to the June 4th operation, I carried the tape recorder to another room where the President's personal secretary and the President were conducting a review.

And if I could correct one point that just occurs to me, I think September 29th was a Saturday. I first received the instruction on a Friday, which would have been the previous day.

Q All right. And at that time did it come to your attention that there were not tapes of any of the conversations in question?

A At that time it was apparent that for two conversations that had been requested, they were not contained on the tapes that had been provided to me.

Q And how was that apparent?

A Well, in one case there was a telephone call that had been requested. There was a tape that supposedly contained telephone calls for a certain period of time, and, had the information on the rear of the tape box been correct, it should have been contained on the tape.

Q Right. And who told you that the conversation was not there?

A Ultimately, the President.

Q You say, "Ultimately, the President." Anyone prior

to the President?

A No, sir.

Q All right. Did you make any effort to determine whether the conversations might have been on any other tapes?

A No, I did not.

Q Well, did you ask to have any additional tapes brought to you?

A Not for the telephone conversation.

Q I see. Well, was there another conversation that appeared not to have been recorded on the tapes that you had been furnished?

A Yes, sir.

Q And do you recall what conversation that was?

A It was a meeting with John Dean held in the Executive Office Building on April 15.

Q And did you make any effort to obtain additional tapes to see whether that conversation might be on the additional tapes?

A Yes, I did.

Q And what did you do?

A I contacted Mr. Bennett and asked him if perhaps there was another box or there was another tape recording that might contain that conversation.

Q And did he furnish ^{an} additional box or boxes?

A Yes, he did.

Q And did it appear that the conversation was on any of those additional boxes?

A It did not.

Q Coming back to the telephone conversation which appeared not to have been recorded, did you arrive at any conclusion or hypothesis as to why it had not been recorded?

A More than a hypothesis. The President recollected that it was made -- the telephone call was made from a telephone which did not have a recording device.

Q Did he tell you --

MR. BEN-VENISTE: I move to strike.

THE COURT: Just a minute, now. Is this something that you learned from the President?

THE WITNESS: Yes, Your Honor.

THE COURT: Who told you that?

THE WITNESS: Yes.

THE COURT: I will just let it stay in the record.

MR. BEN-VENISTE: Recognizing the hearsay problem?

THE COURT: It is hearsay.

MR. PARKER: Well, it is hearsay, Your Honor, but I understood that one of the purposes of this proceeding, that it was of interest, was to develop when various people were aware that these tapes appeared to be missing, and I would suppose it is relevant at least to the --

MR. BEN-VENISTE: I would withdraw our objection on

that basis, just recognizing that it is not offered for the truth of the facts contained therein, Your Honor.

THE COURT: All right. For that purpose you may withdraw that.

I might say that a lot of hearsay has been let into the case.

MR. PARKER: There has, indeed, Your Honor.

BY MR. PARKER:

Q I think I would like to ask, also, just for purposes of clarification or amplification of the answer, if this is also acceptable, if the President indicated what particular telephone he recalled having made the call from?

A Yes, he indicated it was from the telephone in the West Hall, which is the living room of the White House residence.

Q Now, with respect to the other conversation that appeared not to have been recorded, did you arrive at any hypothesis or explanation for that fact?

A Yes, I did.

Q And what was your hypothesis at that time?

A Very briefly, sir --

MR. BEN-VENISTE: What time are we talking about?

MR. PARKER: Well, I think we have pinpointed it as being on September 29th. Are we still on the 29th, Mr. Bull?

THE WITNESS: We are on September 29th. Are you inquiring -- about what date are you inquiring?

BY MR. PARKER:

Q All right. Now, you had gotten the tapes on the 29th. Now, my last question was directed at whether you arrived at any hypothesis at that time on the 29th as to why the conversation on April 15th appeared not to have been recorded?

A Yes, sir. My hypothesis at that time was that the tape had run out; it had been filled up, which would have been a function of the inordinate amount of activity in the EOB Office over a weekend, when there were not TSD people present to tend to these tapes and make changes.

Q Right.

THE COURT: Excuse me. Did somebody tell you that?

THE WITNESS: No, Your Honor.

THE COURT: How did you arrive at that conclusion, what you just stated?

THE WITNESS: Sir, while checking through the tape for a conversation, we came to the end, and it just broke off in mid-sentence, sir.

THE COURT: Well, that is how you came to your conclusion?

THE WITNESS: That is partially the reason, sir.

THE COURT: All right.

BY MR. PARKER:

Q Well, is there any other reason? You said it was partially the reason.

A Well, at that time I never really fully understood electronically how the recording system worked in the Executive Office Building. I had been told during that rather brief briefing that there were two tape recorders over there. It was my understanding, or I probably just assumed, that Tape Recorder No. 2 was a back-up to No. 1, whereby No. 2 would be activated upon the failure of No. 1, or after No. 1 somehow turned off.

I only learned in recent days through the newspapers that this was not the case. No. 2 was not a back-up. It was an alternate that somehow was activated by a timeclock.

This is relevant only to the fact that my initial hypothesis that I articulated to the President was that something obviously broke down, and the back-up recorder did not activate.

Q And did the President have any comment upon your hypothesis?

MR. BEN-VENISTE: Which hypothesis are we having a comment upon?

MR. PARKER: This is the hypothesis that the recorder well, perhaps the best thing is to have Mr. Bull's answer read back, rather than my trying to paraphrase it.

THE COURT: Let us continue. You will have a chance to cross-examine.

THE WITNESS: I don't recall any comment by the President in response to that.

MR. PARKER: One moment, Your HOnor.

A On September 29th.

Q And for what purpose?

A It was my hypothesis at that time, since that tape ran out in mid-sentence, that there was some sort of a back-up recorder, and it would have been activated immediately, and there had to be another reel, which would have been Part 2.

Q Did you ever discover a Part 2?

A No, sir, there was nothing that picked up from where this conversation stopped in mid-sentence.

Q There is also on the same exhibit -- is that Exhibit 5 or 6 that has that notation?

A The "Part 1" is on Exhibit 6.

Q There is also on Exhibit 6 a small "(i)". Did you make that notation?

A No, I did not.

Q Do you know who made it and what significance, if any, it had?

A I believe it was made by Mr. John Bennett, and it corresponded to one of the tapes requested on a subpoena either from -- no, on a subpoena from the Cox Committee.

MR. BEN-VENISTE: Your Honor, in the moment that is lagging, so we can tidy up the record, could we have the time when this was written on there?

THE COURT: Can you give us the approximate time for the record?

way the electronic --

Q -- What --

THE COURT: -- Let him finish.

THE WITNESS: The way the electronic set-up of the tape recorders was in the EOB, there were two. I thought the second was a back-up to the first and I subsequently learned the second one was an alternate to the first one and I think that is significant because that explains why I marked Part 1 on it and if I could explain again --

BY MR. BEN-VENISTE:

Q -- I am asking a very simple question: What did you do after the tape ran out? What did you do?

A Well, all right. At that time I indicated I believe to Miss Woods what I thought to be the reason it trailed off. I believe I called --

Q -- What did you go in and say and who was present when you said it?

A I believe the President was present when I said it but I think I should go back and complete what you originally asked me.

Q What did you say to Miss Woods?

A I do not recall precisely.

Q In substance?

A In substance that I didn't have that conversation yet, that I would continue looking, there might be other means or it might have been overlooked or something, but I think I should

return to what you asked me a moment ago.

Q I am interested in the sequence of what happened next --

MR. PARKER: -- Your Honor --

THE COURT: -- Just a minute, Counsel, please.

I suggest you rephrase your question, put it in another form. Is there something else you want to bring out that you think might be important here?

THE WITNESS: Yes, Your Honor, there is.

THE COURT: Let's hear it.

THE WITNESS: What I am trying to establish, sir, is that basically it is not a missing tape, it is an unrecorded conversation and I feel personally that perhaps I can straighten out this issue, sir, because it is in my mind there was no chicanery ever involved in any of this and I think there is a logical explanation.

THE COURT: Nobody is accusing anybody at this point as I understand it of any chicanery. What the Prosecutor was trying to do is develop what the facts are, what happened, and we will go on from there, don't you see, instead of you giving conclusions and all. But I guess I have given both sides -- I think I have -- a lot of latitude here. We have to do this in a sort of non-jury situation.

Now, let's put the question to him again.

BY MR. BEN-VENISTE:

Q What did you do after you had the conversation with

Miss Woods in which you said you couldn't find the conversation and would attempt further to locate it?

THE COURT: All right, can you answer that question?

THE WITNESS: I don't recall specifically. I believe I offered a partial explanation why it was unavailable on that reel, the explanation which I started to offer you here.

BY MR. BEN-VENISTE:

Q That was what?

A That explanation? You want to know what that explanation was?

Q You gave the explanation to Miss Woods and the President?

A About the matter of two tape recorders thinking one would automatically turn on after the other failed or stopped or otherwise filled up. At some point I telephoned back to John Bennett and advised him that we did not have the April 15th conversation, requested he go and attempt to find another box, see if there was something that had been recorded on what I thought was a back-up recorder, something that would turn on when the other failed.

Q What did Mr. Bennett say?

A He said he would do it, he went into the White House, I believe. I don't know wherever it was these things were stored, telephoned me and said yes indeed, he had found another box. And he would personally carry it out to Camp David that

night, which he did, and I believe I received it around 8:00 o'clock at night -- something like that.

Q What tape did you receive on that evening?

A The one contained in the box that is not marked Part 1.

Q Exhibit 5?

A I don't know how you have it.

(Exhibit handed to the witness.)

A (Cont'd.) Yes, I believe this is the one, sir.

Q Can you be sure?

A Since I did not keep notes I cannot be positive on whether this is the one but I am absolutely certain.

Q What do you recall about the tape that Mr. Bennett brought?

A The second tape I recall it had writing on the back such as that (indicating), a start and termination point that encompassed the April 15th period.

Q What did you do?

A I put it on a play back device and recognized fairly readily that the beginning of the tape didn't pick up where the first one trailed off. In fact, it appeared that it picked up some place maybe late Sunday night or perhaps Monday, I don't know where but I -- but any means there was a gap of quite a few hours.

Q You couldn't find the conversation?

A No, sir.

Q. What did you do after you couldn't find the conversation?

A I believe I reported that to Miss Woods.

Q Pardon me?

A I believe that I reported that to Miss Woods.

Q Was the President there at that time?

A No.

Q Did you inform the President thereafter that you could not find it?

A I do not believe that I personally informed the President after inspection of the second tape that I couldn't find the conversation.

Q Did you assume that someone else to whom you had communicated this information had informed the President?

A Yes.

Q Who did you assume informed the President?

A General Haig.

Q Where was General Haig at that time?

A He was back in Washington either in his office or residence, I am not sure.

Q You telephoned General Haig?

A Yes, sir.

Q What did you tell General Haig?

A To the best of my recollection I told him that I was unable to obtain or to find the conversations of two of the —

excuse me, I was unable to find recordings of two of the conversations in question.

Q Which two?

A The telephone conversation in 1972 between the President and Mr. Mitchell and the meeting with John Dean which took place in the evening on April 15th of this year.

Q Had the President already left Camp David at that time?

A No, he had not.

Q Did you see the President thereafter?

After you made this call to General Haig?

A No, I did not.

Q What did General Haig say to you after you gave him this information?

A I don't recall.

Q In substance?

A I don't recall.

Q Did he ask you to look any further or did he ask you for an explanation?

A I don't recall whether he asked for an explanation at that point or not.

Q I show you Exhibit 28 for identification and ask whether you have ever seen any part of these documents which are included in Exhibit 28 for identification?

A I don't believe I have ever seen these.

Q Never seen any of the documents?

52. On October 1, 1973 Woods continued work on the transcription of the June 20, 1972 EOB tape at her office in the White House. During the day she began to transcribe from a new Uher 5000 recorder that had been purchased that day by the Secret Service for her use. Woods testified on November 8, 1973 that she took every possible precaution not to erase any part of the tape. After the existence of the gap in the tape was disclosed on or about November 21, 1973, Woods testified on November 26, 1973 that part of the recording may have been erased while she was talking on the telephone and that shortly after she had discovered the gap on October 1, 1973 she had reported to the President that a gap of approximately 5-1/2 minutes existed on the tape and that she had made a terrible mistake. Woods also testified that the President had told her the gap was no problem because he had been informed by his counsel that the June 20th Haldeman conversation had not been subpoenaed.

	Page
52.1 Rose Mary Woods testimony, November 8, 1973, <u>In re Grand Jury</u> , Misc. No. 47-73, 826-27, 832-33.....	688
52.2 Rose Mary Woods testimony, November 26, 1973, <u>In re Grand Jury</u> , Misc. No. 47-73, 1213-14, 1267-70, 1272-75, 1292-97.....	692
52.3 President Nixon daily diary, October 1, 1973, Exhibit 116, <u>In re Grand Jury</u> , Misc. No. 47-73.....	708
52.4 Louis Sims testimony, January 16, 1974, <u>In re Grand Jury</u> , Misc. No. 47-73, 2309-14.....	711
52.5 Stephen Bull testimony, January 16, 1974, <u>In re Grand Jury</u> , Misc. No. 47-73, 2353-55.....	717

sitting where someone could come in and just turn it on and listen to it or play it or maybe hit a wrong button and destroy the whole thing.

Q Did he give you any instructions about erasing it?

A He said be very careful this area is to record, this, that and the other, and I very carefully didn't touch that side of the machine.

Q Was that on the separate side of the machine from the on-off button?

A The on-off was up here and record was here (indicating).

Q Where was forward and reverse?

A Well, the stop was here; the forward was here; and the reverse was there on that particular machine (indicating).

Q In other words, they were close together?

A Stop, forward, and reverse, yes, they were at that end of the machine.

Q Where was the erase?

A Right here (indicating), right in the middle. The machine is only that large, I would say it was two inches from it. I don't know, I would have to measure it, not being an expert on it.

Q Were any precautions taken to assure you would not accidentally hit the erase button?

A Everybody said be terribly careful, I mean, I don't think, I don't want this to sound like I am bragging but I don't

believe I am so stupid that they had to go over it and over it. I was told if you push that button it will erase and I do know even on a small machine you can dictate over something and that removes it and I think I used every possible precaution to not do that.

Q What precaution specifically did you take to avoid either recording over it, thereby getting rid of what was already there?

A What precautions? I used my head. It is the only one I had to use.

Q You said you listened that day starting at about what time?

A On Saturday, the 29th, we left the White House at 8:15, probably arrived there about an hour and a half drive, I think, probably started I would say 11:00 o'clock.

Q 11:00 o'clock. And how long did you work that day?

A Until 3:00 a.m. Sunday morning.

Q And how many breaks did you take?

A I didn't take any. I had them deliver my lunch. As I say, I had big ideas as I thought I was going to finish the job over the weekend.

Q You worked approximately 16 hours?

A That is right. That is not unusual, I expect.

Q You went to bed you said at 3:00 a.m. and arose at 6:00 a.m.?

All right.

THE WITNESS: Well, I think I answered your other question. There was the President, John Ehrlichman, and Bob Haldeman.

BY MRS. VOLNER:

Q You haven't told me the date of that.

A I have told you I don't remember. I really do not. And I think if you had sat and typed that long and then came back and tried to take calls in between you wouldn't remember the dates of those tapes either.

Q How many hours do you think you worked on that particular tape following the 29 hours at Camp David?

A Probably two, maybe two and a half.

Q Was that --

A -- That is how bad it was to get, yes. I tried to explain it was a very bad tape. It was very, very difficult and at Camp David I did not have a foot peddle where I could stop and keep on going, you had to stop and start and if you ever run one, maybe you haven't, but it takes one awful long time when you don't have a foot peddle for it.

Q The question is: After the 29 hours you worked at Camp David, you said you worked in your office at the White House on this same tape, is that correct?

A That is right.

Q How many hours did you work on that same tape in the ¹⁹⁷³

White House?

A That is what I just said, about two or two and a half hours.

Q Did that complete your work on that particular --

A -- That is right.

Q Now you spent over 30 hours on the tape. All I am asking you to recall is what the date of the tape is that you were working from?

A And I am telling you --

MR. POWERS: -- Excuse me, if Your Honor please --

THE WITNESS: -- I already told you I don't know.

THE COURT: Wait a minute, Miss. When there is objection or counsel stands up, I have to hear counsel.

MR. POWERS: I object to the repetition. We have been over this and she has tried to explain about the date and counsel has referred to the subpoenas.

THE COURT: Which one of the tapes are you referring to?

MRS. VOLMER: The Government's subpoena from the Special Prosecutor's office, Exhibit 27, indicates that the June 20th meeting in the EOB office was between the parties Miss Woods is testifying to.

THE COURT: What is your question that you wish to be put to the witness?

1213

MRS. VOLNER: I would like to have this Uher machine marked as the next exhibit for identification.

THE DEPUTY CLERK: Government Exhibit No. 60 marked for identification.

[Government Exhibit No. 60 was marked for identification.]

MRS. VOLNER: I would like to identify Exhibit 60 as a Uher machine.

THE COURT: How do you spell that?

MRS. VOLNER: U-H-E-R.

Which has been given to us connected with an ear phone set and a foot pedal. The foot pedal is a fidelity tape foot pedal and the ear phones have no marking as to brand name.

BY MRS. VOLNER:

Q Miss Woods, can you identify Exhibit 60, please?

A Yes, this is the machine I used.

Q Where did you use that machine?

A I used this machine the first day I used it, which was the day we returned -- the day after we returned from Camp David.

Q In what location did you use it?

A In my office.

Q At the White House?

A Yes, ma'am.

Q Did you use that at Camp David at all?

A No, this machine was not at Camp David. I believe they had to go out and buy or get one because we had no foot pedal nor any ear plugs that we could really use very well -- I say we, I could use at Camp David.

Q Mr. Bull supplied you with that machine?

A He brought it to me, I don't know who got it.

Q Mr. Bull supplied you with the other machine as well, Exhibit 59?

A That is correct.

Q Did you use that machine, the Uher, Exhibit 60, subsequent to the White House --

A -- Yes, na'an.

Q And are you sure that Exhibit 60 is the exact machine that you used?

A Yes, na'an.

Q How do you know that it is the same machine that you used?

A Because there is none around -- I saw one Secret Service or some kind of mark and it is the only machine we have.

I think General Bennett or someone has the serial number from it.

Q Does this have a Secret Service mark on it?

A No, it does not. It is right here (indicating).

52.2 ROSE MARY WOODS TESTIMONY, NOVEMBER 26, 1973, IN RE
GRAND JURY, MISC. 47-73, 1213-14, 1267-70, 1272-75,
1292-97

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request re the meeting on June 20th. It said Erlichman [sic]/Haldeman meeting. What he wants is the segment on June 20th from 10:25 to 11:20 with John Erlichman [sic] alone. Al Haig."

BY MRS. VOLNER:

Q Now, you then listened to the Erlichman [sic] portion of the tape and you first heard the Haldeman portion on October 1st at the White House?

A That is right. That was when I was ending the Erlichman [sic] one.

Q I am sorry?

A That was when I was ending the Erlichman [sic] one and wanting to be sure that I had.

Q And you said you listened to just a few minutes of Haldeman?

A That is right.

Q At what point did you stop listening to Haldeman?

A Well, I started to stop listening to Haldeman when they started talking about scheduling matters, about going to a state where Pat Nixon's mother and father had lived, were married before they moved to Ely, Nevada, where she was born. And there was something about tourism. I don't know whether some Governor had called and asked. I don't remember. And that is the last I heard on that tape. And that is the time that through some error on my part some way in turning around to reach one of my phones, which buzzes and buzzes and buzzes,

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final

52.2 ROSE MARY WOODS TESTIMONY, NOVEMBER 26, 1973, IN RE
GRAND JURY, MISC. 47-73, 1213-14, 1267-70, 1272-75,
1292-97

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I pushed the record button down. Now, whether I held my foot on the pedal or whether the button stuck down I couldn't tell you. I thought it was something like 4-1/2 to 5 minutes and I so told the President as soon as I could go in to see him.

Q You told the President exactly what?

A That I was afraid that I had caused a gap in the Haldeman tape and he said, there is no problem because that is not a subpoenaed tape.

Q You told him that on October 1st?

A That is right.

Q And did you have any other conversation with the President on October 1st?

A I haven't the slightest idea.

Q Did you listen to the portion that you had, as you testified, perhaps erased?

A No. The last word I heard on the Haldeman was Ely, Nevada, or Ely, and the next thing when I pushed the button back I got as far as Ely again and that is when there is this shrill noise.

Q And what follows the shrill noise?

A What follows the shrill noise is again something -- This is what I listened to on Saturday or Friday, whichever day. What follows is something about Democratic Convention or seating of delegates or -- I didn't try to take it down at all.

Q Was there anything concerning the --

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52.2 ROSE MARY WOODS TESTIMONY, NOVEMBER 26, 1973, IN RE
GRAND JURY, MISC. 47-73, 1213-14, 1267-70, 1272-75,
1292-97

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A I just listened for just enough time -- I didn't try to type it.

Q Now, you say that you think that the telephone rang and you did something to the machine?

A I have explained or tried to explain.

Q I would like to go over again precisely what happened.

A That is what I am trying to do. I had been working all those hours at Camp David on the one Erlichman [sic] tape. I got back to my office and still had several hours on that same tape to finish, plus work that stacked up over the weekend. And it is pretty phenominal [sic] at the White House. And it was very, very busy day. I did try. I did get to the end of the Erlichman [sic] one and I could not tell for sure. The President said something like, all right, John, but I did not know whether John left and then I was listening as far as the Ely thing and I pushed the record button, obviously. That is right by, if you will notice on the machine, instead of the one that was up at Camp David, which I had been using, it is right together with the stop button.

Q Now, was this when the telephone rang?

A That is right.

Q And who did you talk to?

A I haven't the slightest idea.

Q How long were you on the telephone?

A As I say, I thought it was 4 or 5 or 6 minutes but,

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House Judiciary Committee staff

obviously, my judgment of time is bad.

Q Do you think you were on the telephone for 18-1/2
minutes?

A I don't think I was but -- I am sorry.

Q Go ahead. I didn't mean to interrupt your answer.

A I don't think I was but I don't keep track of how long
calls are. I don't keep a telephone log.

Q Does anybody keep a telephone log for you?

A No, because I have quite a few lines that come in.
I have 9 lines. Several of them are private. Two of them are.
One is a buzzer that buzzes from the President and it doesn't
stop until you push it down and it is very loud. One is a
direct line from him from his formal office and his oval office.
Another one is a private one that cannot be answered anywhere
but in my office. Another one is an intercom within the White
House which I made a practice of answering myself. Then there
are 5 or 6 that the girls answer.

Q You have already testified that the machine you were
using is exactly the machine that is Exhibit 60, is that the
correct one?

A The gray --

Q The Uher Machine?

A Yes.

Q And the footpedal and earphones have been marked
Exhibits 60-A and 60-B. Are those the footpedal and earphones

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52.2 ROSE MARY WOODS TESTIMONY, NOVEMBER 26, 1973, IN RE
GRAND JURY, MISC. 47-73, 1213-14, 1267-70, 1272-75,
1292-97

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A No, I did not. But I must have kept my foot on the foot pedal.

Q Had you typed up the portion [sic] about Ely, Nevada?

A I don't know whether I typed it or whether I just listened to see whether John Erlichman [sic] said anymore.

Q Have you reviewed your transcript to refresh your recollection?

A No, I have never seen my transcript again.

Q But it is possible you did type that portion of the Haldeman conversation?

A I may have and I may not have. I doubt that I did but I may have. As I say, I turned that transcript in October 1st.

Q Now, after you had --

A I say transcript. I want to change that. It isn't a transcript. Your Honor, you will find it is the gist of what we can get.

Q After you had hit this button what did you do?

A Well, I must say after I turned around from the telephone, being someone who has tried to do a good job, I practically panicked. I pushed back the button, the return button, to the part where I heard the President saying, all right, John, and listened again, listened as far as Ely, and then heard the noise.

THE COURT: Let me interrupt a minute. What date was

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it that Miss Woods testified in this Court?

MRS. VOLNER: October 1st, I believe, Your Honor.

THE WITNESS: No.

MRS. VOLNER: Oh, she testified here on November
8th.

THE COURT: November 8th. Did you inquire of her on
that occasion about what she did in connection with listening
to this particular tape?

MRS. VOLNER: I believe the focus of the testimony
was on what she did at Camp David but we definitely did inquire
and I believe the testimony will reflect that Miss Woods said
that she never touched that side of the machine on which the
record button was located.

THE COURT: My question to you, Miss Woods, is, did
you, at any time, during your testimony the last time you were
in this Court mention what you have mentioned on the stand
today, that you were touching something and for 4 or 5 minutes
or something like that?

THE WITNESS: No, Sir, I didn't. I am sorry, I may
have been wrong but I thought it was not relevant because it
was not a subpoenaed tape.

THE COURT: All right, proceed.

BY MRS. VOLNER:

Q Was that the first time you had heard this audible
tone which was not conversation?

Rose Mary Woods testimony, November 26, 1973,
In re Grand Jury

Retyped from indistinct original

A Yes. We have heard other odd tones in the tapes, you know, where they roll around and make a lot of sound sometimes but nothing that I call it loud or shrill or something.

Q Was that shrill noise there prior to your touching the record button?

A No. I could hear Ely, Nevada, then, or at least Ely. I don't know whether the word Nevada but I know that is where she is from.

Q Did you ever hear that shrill sound prior to pushing the record button at that particular point in the tape?

A I didn't hear it when I pushed the record button. I heard it when I turned the machine back and played back again to be sure. That is when I heard the shrill. I didn't hear it when I pushed the record button.

Q I don't think you are answering my question. My question was, before you touched the record button while you were listening to the tape and before the telephone rang you heard something about Ely, Nevada, did you hear at that time before you touched the record button any shrill sound following the words Ely, Nevada?

A No, and I don't know whether the last words were Ely, Nevada, we would have listen to it.

Q Following that portion of the tape?

A I did not hear it, no, ma'am.

Retyped from indistinct original

Indistinct document retyped by
House Judiciary Committee staff

Q Did you on October 1st listen through the 18 minutes
of shrill sound?

A October 1st, no. That is when I told you I went
in to the President and said, I have made a terrible mistake,
I pushed the record button. And that is when he told me that
the counsel had told him and he was not concerned because it
was not a subpoenaed tape. Now, unfortunately, I have just
heard the other day that it was a subpoenaed tape.

Q How soon after this accident did you tell the
President?

A I told him -- I looked this up yesterday. I would
say I went in his office around 2:15. So I would say that
I told him 5 minutes afterwards because I was so -- I was
very upset, you could imagine.

Q Was anybody present during that conversation?

A No.

Q It was just you and the President?

A That is right.

Q In what office?

A The Oval Office.

Q Did you report this accident to anyone else?

A No. I don't know whether the President did or not
but I didn't.

Q You never told Mr. Buzhardt?

A I don't believe so. Again, the President may have

Indistinct document retyped by
House Judiciary Committee staff

Sokal/ska
flg.Maher

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AFTER RECESS -- 4:00 o'clock p.m.

THE COURT: All right, you may proceed.

BY MRS. VOLMER:

Q Miss Woods, before the break you were testifying having reported this accident to the President and you said you told him immediately, or five minutes after it occurred?

MR. RHYNE: Your Honor, just before the break I objected. This whole part of the transcript was read. I think it only fair the witness be allowed to give her comments about it rather than just let it pass by.

THE COURT: Do you want to make some answer to what you said there in the transcript?

MR. RHYNE: She should be allowed to explain.

THE COURT: If you have any explanation, I will hear it.

THE WITNESS: I can only say again that I did work very hard over that whole long weekend. I think almost everyone here has looked at both the black and the gray machine.

was

The black machine which I used to up at Camp David has a red reverse-dictate, or whatever they call the thing, and the other machine is all on one line and I sounded a little cockey there when I said I used my head, I was nervous and I think I do try to use it mostly but like other people sometimes we don't always do everything perfectly. On the

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other machine the stop and record are together, I don't know if everybody has seen them.

I get probably between 50 and 60 calls a day in the middle of doing this work, and I worked all weekend and I was exhausted.

I can offer no excuse for this. I never heard any words on that tape so I have heard or read in the paper the word "erase". I didn't hear anything, so I called it a gap. I never did hear any words on that part of the tape that is missing and I am sorry, I know that everybody told me but it was on the black machine that I worked for 29 hours or 27 hours, whatever, at Camp David and then went to work on the different one.

I just wanted to make that explanation.

THE COURT: All right, you may proceed.

BY MRS. VOLNER:

Q You said you reported this to the President a few minutes after you discovered your error?

A Just as soon as I saw that his office was empty, yes. There is a light on my desk which shows whether there is someone in his office or whether he is alone.

Q Can you relate the exact conversation you had with the President?

A Yes, I said that as he knew I worked very hard

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and I went in and said I am terribly embarrassed, I don't know what has happened. But after I got through talking on this phone call I then tried to listen a little further after I went back as I said to Ealy and there was nothing, I never heard anything on that part.

So I told him and my recollection of the phone, as I said, I get 50 or 60 a day and my recollection is maybe it was five and a half minutes at the most. But that is the best I can say.

Q What else did you tell the President and what did he say to you?

A I didn't tell him anything else, I told him I either had kept my foot on the pedal -- I told him this much while explaining -- I either kept my foot on the pedal because I reached around and grabbed my phone which has one of those long things on it and talked, opening letters, and things while listening to people. I could have easily kept my foot on the pedal and the lid on that gray machine had to stay down because the desk on which my typewriter and that machine were, they are not as wide as this is (indicating). The lid had to stay down and you could not watch the tape run.

Whether there was ever anything on it, I do not know.

Q When you hung up the phone did you take your foot

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off the foot pedal?

A That is what I don't know. I saw the record button down and this is what frightened me.

Q Was any other button pushed down?

A I don't remember whether the start button was down. Part of the time we used the start button and push button, I mean the foot pedal, to hear, to see if we can bring it in clearly.

I am using the term "we". It was just we. It was difficult to hear. We kept changing the tone, using the foot pedal, ear plugs and sometimes both, sometimes one.

Q When you were listening to it the only thing you had to do was press the listen button?

A You can do both and get better quality.

Q Did you in fact do both?

A I tell you I do not know. I know the record button was down. Whether I had the record button, I don't know. I know many times while typing the other tapes I had both down.

Q When you hung up the phone you noticed the record button down. I assume you immediately took your foot off the pedal?

A I would be sure I would, yes.

Q I assume you were quite startled?

A I was startled.

Q You related all this to the President?

A Yes.

Q This is within five minutes after you hung up the telephone?

A I would say five-ten-fifteen minutes. Soon as the light went out I saw whoever was visiting was gone.

Q You didn't sit with your foot on the pedal that 15 minutes?

A I haven't any idea. If I knew, I would tell you because if you have tried that, your foot could be on that pedal and you could have it on both the forward and back and get clearer off the tape actually.

Q What did the President say to you?

A He said don't worry about it, that is not one of the subpoenaed tapes. It is too bad, but don't worry about it.

Q That was the first thing he said to you?

A Yes.

Q Had you told him it was the Haldeman portion of the tape?

A I didn't know what it was. It was the start of the Haldeman tape, yes.

Q How did the President know it was not one of the

subpoenaed tapes?

A Because his counsel had told him.

Q When?

A I don't know when he told him. You will have to ask counsel.

Q Did he ask you what the contents of the erased portion was?

A There was no way I could have answered that question.

Q Did he ask the question?

A He asked and I said I heard nothing.

Q Did he ask you what the content was prior to the erasure?

A Yes.

Q What did you tell him?

A I told him it was on scheduling, whether they would go to North Dakota, or South Dakota, or whether they would go to Italy.

Q Did he ask you what the content was following the erasure?

A No, because I thought -- I had been on the phone only a few minutes, I never heard the whole thing until I listened to it with the Rhynes the other day.

Q Has the President ever talked with you about the erasure since October 1st?

**52.3 PRESIDENT NIXON DAILY DIARY, OCTOBER 1, 1973,
EXHIBIT 116, IN RE GRAND JURY, MISC. NO. 47-73**

THE WHITE HOUSE		PRESIDENT RICHARD NIXON'S DAILY DIARY (See Travel Record for Travel Activity)		FILE COPY
PLEASE PRINT NAME		DATE (Mo., D., Yr.)		
THE WHITE HOUSE WASHINGTON, D.C.		OCTOBER 1, 1973		
		TIME DAY		
		8:46 a.m. MONDAY		
TIME		PHONE P=Placed R=Received		ACTIVITY
In	Out	Lo	LD	
8:46				The President went to the Oval Office.
8:46		P		The President requested that his Assistant, Ronald L. Ziegler, join him.
8:47	8:49	P		The President talked with his daughter, Julie.
8:50	9:16			The President met with Mr. Ziegler.
9:17	10:45			The President met with: Alexander M. Haig, Jr., Assistant Melvin R. Laird, Counsellor
9:50	10:18			The President met with: Henry A. Kissinger, Secretary of State Francois-Xavier Ortoli, President of the Commission of the European Communities Philippe de Magerie, Chief of the Cabinet for the Commission of the European Communities Charles A. Cooper, Deputy Assistant Alec Tounayan, State Department interpreter Members of the press, in/out White House photographer, in/out
10:57	12:09			
11:06	12:09			
11:06	12:09			
11:06	12:09			
11:06	12:09			
11:06	12:09			
12:09				The Presidential party went to the West Lobby.
				The President bade farewell to Mr. Ortoli.
12:10				The President returned to the Oval Office.
12:11	12:13			The President participated in a promotion ceremony for his Deputy Assistant, Brig. Gen. Brent G. Scowcroft who was promoted to Major General in the U.S. Air Force. For a list of attendees, see APPENDIX "A." White House photographer, in/out
12:15	12:17			The President met with: Congressman Del Clawson (R-California) Max L. Friedersdorf, Deputy Assistant White House photographer, in/out Congressman Clawson presented the President with a centennial plate from Downey, California.
12:28	12:30			The President participated in a signing ceremony for S. 1148, the Domestic Volunteer Service Act of 1973. For a list of attendees, see APPENDIX "B." Members of the press, in/out White House photographer, in/out

Misc 47-73 In re Grand Jury Proceedings

52.3 PRESIDENT NIXON DAILY DIARY, OCTOBER 1, 1973,
EXHIBIT 116, IN RE GRAND JURY, MISC. NO. 47-73

PRESIDENT TELEPHONE RECORD

(See Travel Record for Travel Activity)

DATE (Mo., Day, Yr.)

OCTOBER 1, 1973

TIME DAY

12:35 p.m. MONDAY

HOUSE
LEGION, D.C.

TIME		PHONE P = Placed R = Received		ACTIVITY
In	Out	Lo	LD	
12:33			P	The President telephoned long distance to C. G. Rebozo in Key Biscayne, Florida. The call was not completed.
12:58				The President went to his office in the EOB.
1:14	1:20		P	The President talked long distance with his daughter, Tricia, in New York City.
2:04	2:10			The President met with: Maj. Gen. Walter R. Tkach, Physician
2:08	2:15			Rose Mary Woods, Executive Assistant
2:15			P	The President requested that Mr. Ziegler join him.
2:25	2:41			The President met with Mr. Ziegler.
2:44	2:47		P	The President talked long distance with Mr. Rebozo in Key Biscayne, Florida.
2:45	3:05			The President met with Mr. Haig.
3:06				The President, accompanied by Mr. Haig, went to West Executive Avenue.
3:06	4:55			The President and Mr. Haig motored through the Washington metropolitan area.
4:57				The President returned to his office in the EOB.
5:01				The President returned to the second floor Residence.
5:20	5:25		R	The President talked with Mr. Haig.
5:34	5:35		P	The President talked with Senator Strom Thurmond (R-South Carolina).
5:36	5:45		P	The President talked with Senator John G. Tower (R-Texas).
5:41	5:43		P	The President talked with Senator Henry M. Jackson (D-Washington).
5:44			P	The President telephoned Senator John C. Stennis (D-Mississippi). The call was not completed.
5:46	5:50		P	The President talked with Secretary Kissinger.
6:08	6:10		P	The President talked with Senator Stennis.

PRESIDENT RICHARD NIXON'S DAILY DIARY

(See Travel Record for Travel Activity)

DATE (Mo., Day, Yr.)

OCTOBER 1, 1973

TIME DAY

6:13 p.m. MONDAY

WHITE HOUSE
WASHINGTON, D.C.

TIME		PHONE P=Placed R=Received		ACTIVITY
In	Out	Lo	LD	
6:13	6:14	P		The President talked with Senator John L. McClellan (D-Arkansas).
6:30				The President went to the South Grounds of the White House.
6:34	6:50			The President motored from the South Grounds of the White House to Trader Vic's Restaurant in the Statler Hilton Hotel. He was accompanied by: The First Lady Mr. and Mrs. David Eisenhower
				The President had dinner with: The First Lady Mr. and Mrs. Eisenhower Mr. and Mrs. Robert Milligan, friends of the Eisenhowers
				After dinner, the President greeted patrons of the restaurant including: Ibrahim Al-Sowayel, Ambassador from Saudi Arabia to the U.S. Talal Al-Sowayel, six-year-old son
				The President went to his motorcade parked at the restaurant entrance. Enroute, he greeted members of the crowd gathered outside the hotel.
6:51	6:51			The President and the First Lady motored from the Statler Hilton Hotel to the South Grounds of the White House.
8:58				The President returned to the second floor Residence. He was accompanied by: The First Lady Mr. and Mrs. Eisenhower Mr. and Mrs. Milligan

What is the first code number there before White House taping system?

A That would be the Secret Service file number.

Q Is that the file that you referred to?

A Yes, it is.

Q That is the general file containing all the information on the taping system that you have?

A It is the general file containing -- you say all the information on --

Q -- The information that you have on the taping system.

A You realize that our original documents -- these are copies -- are still in the regular places in the supply area. They are not in that file.

Q Can you tell us what the circumstances were of your purchasing this Exhibit 60?

A Yes, I can. On the morning of October 1st, 1973 Mr. Bull contacted me -- I can't remember if in person or on the telephone -- and asked for a recorder with a foot pedal capability.

Q What time of the morning did he contact you?

A Oh, I would say 10:00 a.m.-11:00 a.m., somewhere.

Q About 11:00 a.m.?

A Let's say 10:00 --

Q -- Do you remember?

A I would say it was closer to 10:00 than it was to 11:00.

Q What did he say he wanted?

A He said he wanted a recorder that had a foot pedal capability, meaning forward and back, so that if someone were typing they wouldn't have to use their fingers, they could keep typing.

Q Did you discuss with him whether you had one in stock?

A I told him that I would have to check and see, I didn't know.

Q What did you do then?

A Then I checked with my people in supply that work for me and asked them if we had any recorder in-house, no matter what the make was, that had a foot pedal capability.

Q Who did you check with?

A I believe it was Ray Zumwalt. It might have been Jim Baker, I believe it was Zumwalt. He was in charge of that area.

Q Did Mr. Zumwalt go down and make a check?

A Mr. Zumwalt has an individual that is like a supply sergeant, a supply supervisor, Mr. Darvis Reed, and he checked and reported back to Mr. Zumwalt.

Q He reported back to Mr. Zumwalt and Mr. Zumwalt reported to you?

A Yes.

Q What did he say?

A He said that on the quick check he could not determine that we had one available for use in-house and he would recommend that the normal type recorder that we could use in our operation was the Uher 5000 that he happened to be aware that the foot pedal was a backward and forward.

I then contacted my immediate supervisor, Assistant Director Kelly, and advised him we had a request and that a quick check revealed there wasn't one in-house but we knew where we could purchase one if that were the decision and we could use it in our operations from day-to-day.

Q What did Mr. Kelly say?

A He said go ahead and supply it.

Q What did you do then?

A I, of course, advised Mr. Zumwalt to make the purchase and Mr. Bull asked to have the recorder by noon.

Q By noon was it supplied him?

A No, it wasn't. That is the reason I can remember the time is that we had to first of all initiate a purchase order for it and then we had to send one of my people and I can't tell you precisely who, but one of my people in my office, to the location in Washington. It is listed on there, the place that sells this type recorder.

Q Where was that? Did you go or someone else?

A No, I didn't go.

Q Do you remember who went?

A No.

Q Was it Mr. Zumwalt, do you think?

A No.

Q You sent someone else?

A Yes. It was a runner-type job.

Q That is Fidelity Sound Company?

A That is it.

Q 1200 18th Street, Northwest.

A Okay. If I recall, he had one in stock and we told him -- whoever contacted him -- told him to hold it that we would be down and we picked it up and by the time we got the purchase order, you may imagine it takes a few minutes, I would say we got the recorder back in the Technical Security Division about 12:30 -- roughly 12:45.

Q Was there some problem getting a Uher foot pedal?

A No, it came with it.

Q Came with the Uher?

A Yes, it did -- one of those that goes backward and forward.

Q You sure of that?

A Yes, it did. Isn't it right on there? Look at the purchase order.

(Mr. Ben-Veniste hands exhibit to the witness.)

"Recorder, Uher Model 5000 with foot pedal"

Q You sure that was a Uher foot pedal?

A It came as a package. We didn't buy it separately.

MR. BEN-VENISTE: Do we have the foot pedal in evidence, Mr. Clerk?

MR. HAUSER: Your Honor, could I ask counsel clarify his question? I don't know if he is asking is it a Uher foot pedal or foot pedal that came with the Uher, or --

MR. BEN-VENISTE: I asked twice whether it was a Uher foot pedal.

THE COURT: If he knows.

BY MR. BEN-VENISTE:

Q Mr. Sims, is this the foot pedal that came with that machine?

A I couldn't tell you if it is or isn't.

Q You notice it is a Fidel tape foot pedal not a Uher.

A I know that the Uher package, when I first saw it, this was in a little box with the plastic bag that the recorder was in.

Q You can't tell one way or the other whether this is the one or not?

A I could not.

Q Your information was that it came as a package with the recorder?

A Yes.

Q Now, this is about 12:45. What did you do then?

A One of the technicians in the Technical Security Division checked it out as he would any recorder to see if it operated, if the power got to it, and what-have-you. But he checked it out to see if it was working and then Mr. Everett Sholl, who works for me as a technician, a security specialist in my division, he and I walked over to Mr. Bull's office with the recorder and foot pedal.

The reason he went so he could show Mr. Bull how to operate it because I sure didn't know.

Q About what time was this about the time you got to Mr. Bull's office?

A I can't be precise but it was 1:00 or 1:15.

Q You remember this because you tried very hard to hit that 12:00 o'clock?

A We missed it by an hour.

Q And that stands out in your mind?

A Yes, it does.

Q So about 1:15 you were down with Mr. Bull and who else?

A Security Specialist Everett Sholl.

Q Where did you go with the machine?

A To Mr. Bull's office.

Q Did you then demonstrate the machine to Mr. Bull?

A Mr. Sholl explained it to Mr. Bull so that he could know what buttons and how to plug the foot pedal in.

2503

A Yes.

Q In Miss Woods' office?

A That is correct, I believe.

Q Now you say that you thought that this was a continuing process and you would be of assistance to Miss Woods at Key Biscayne as you had been in Camp David.

A Yes.

Q Did you perform any or render any assistance for Miss Woods during that week?

A Yes, - I did.

Q When was that?

A It started off on Monday, October first, which I can recall because Saturday September 29th stands out in my mind - that figure -- it occurred to me that Miss Woods may be having some difficulty typewriting and operating and hand or button activated tape recorder as she had been using at Camp David, so I inquired of either Mr. Sims, or -- or Mr. Zumwalt of T.S.D. whether it might be possible for the Sony button operated player, tape player, to be modified so as the foot pedal such as a stenographer might use could operate it and I was advised that the Sony could not be modified - however, they might be able to obtain a machine that would satisfy the requirements which were two-fold - one to run a fifteen-sixteenth inch per second tape, controlled by foot pedal. and, two, that it be

Shall I just proceed?

2354

Q No - may I stop you there -- thank you for providing that information because I would have asked you about it, but did you then hear back from Zumwalt?

A Initially, they said they would have to check on it, as I recall, because they were not sure if they had any machine like that readily in their supply system and I was told later on that morning that they would have to go out and buy one.

Q Who told you that?

A I believe either Mr. Sims or Mr. Zumwalt -- anyway, I was told by Mr. Sims that they were going out - that they had located one and they were going to go out and buy it and they would deliver it.

They subsequently delivered it to me and the reason they delivered it to me is because I was the person who asked for it. I never told them the purpose for which I would use it although they could speculate as much as they wanted.

They delivered it to me and I believe there was a third person there who explained how the thing worked and where the footpedal was to be plugged in, and where the ear phones could be plugged in, and I subsequently recall carrying it in - in some manner to Miss Woods' office which was next door to mine at the time - and I subsequently moved

- but anyway I recall carrying it next door I believe ²³⁵⁵⁵
in a large suitcase and setting it up for her and showing
her how to operate it and I don't recall specifically but I
may have put a tape on for her.

Q Was she listening to tapes when you came in
to see her?

A I don't recall whether she was or not.

Q You don't?

A No.

Q Did she have the tape recorder there?

A I really don't recall - no, I don't recall
whether she had the tape recorder in her office or not.

Q Was this before or after noon?

A I can't fix the specific time, but I think
it would probably be around noon. I would like to put it
right around noon.

Q You would like to -- could you fix it
in any way?

A Yes because I knew Miss Woods was having some
trouble completing her review process, so perhaps I even
initiated it - it was taking her so long - so I asked them
to get it as soon as possible and none was - you know, the
noon hour, ~~was~~ to stand out.

Q Does it stand out as the time you requested it
or the time you received it?

A It stands out as about the time I received it.

53. On October 4, 1973 Bull and Woods accompanied the President to Key Biscayne. They took with them several tapes, including the June 20th EOB tape, and the Uher 5000 tape recorder. The tapes and the recorder were kept in a safe in the villa occupied by Woods. The Secret Service maintained a log showing who opened and closed the safe that contained the tapes, the tape recorder, and other envelopes. According to that log access to the safe was limited to Bull and Woods who opened and closed the safe on several occasions during the three day period the tapes were in it. Woods has testified that the June 20 tape was neither removed from the safe in Key Biscayne nor played during the October 4 weekend.

	Page
53.1 Stephen Bull testimony, January 16, 1974, <u>In re Grand Jury</u> , Misc. 47-73, 2351, 2359, 2361, 2363, 2372.....	722
53.2 Stephen Bull testimony, January 18, 1974, <u>In re Grand Jury</u> , Misc. 47-73, 2570-71.....	727
53.3 Rose Mary Woods testimony, November 26, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 1255-56.....	729
53.4 Access log for Key Biscayne safe, October 4-7, 1973, Exhibit 167, <u>In re Grand Jury</u> , Misc. 47-73.....	731

frivolous.

THE COURT: I will sustain the objection - strike that.

BY MR. BEN VENISTE:

Q In addition to the material you say you placed in that case, do you remember anything else?

A No - I think I described the contents.

Q As taking down to Key Biscayne?

A No -- I believe that is all I placed in it.

Q You only took one tape recorder?

A As I recall just one tape recorder.

Q And that was exhibit 60 - the Uher tape recorder and foot pedal - right?

A I don't know your exhibit number - but it was a Uher tape recorder with footpedal.

Q All right - and how about any transcript of any material that Miss Woods had typed theretofore - was that included?

A I don't recall

Q And did you carry this briefcase?

A Yes.

Q Yourself?

A Yes sir - I did.

Q And then when did you receive the tapes in order to put them in this briefcase?

A No, I do not.

Q Coming back to Key Biscayne - did you carry the luggage aboard the airplane by hand or was it checked?

A No - I carried this - my big bag on by hand.

Q Was that Air Force One?

A Yes sir - that was Air Force One.

Q And did you carry the bag off the plane also?

A Yes, I did.

Q Did you maintain custody of that bag until you arrived at your quarters at Key Biscayne?

A I retained custody until we had established adequate security measures in one of the villas at Miss Woods' Hotel - where Miss Woods was staying, the Key Biscayne Hotel, and I believe I explained last November what those security measures were.

Q That is to say, you asked the Secret Service to provide a safe, or GSA to provide a safe - I don't think we were clear on that - and asked for some Secret Service privilege to guard that safe?

A That is correct, sir.

Q And you insisted that on your own?

A Yes, I did.

Q And the safe was in fact provided shortly after, was it?

A Yes - very quickly.

MR. BEN VENISTE: I can't say that it 2361
would not, Your Honor.

THE WITNESS: I stayed in a separate dwelling.
(Laughter)

MR. BEN VENISTE: I didn't mean that. That thought
had never crossed my mind. (Laughter)

BY MR. BEN VENISTE:

Q The safe was in the same edifice as Miss Woods
was staying - indeed the same townshouse or villa?

A Villa - yes, sir. That is correct.

Q And the Secret Service Agent stayed there
around the clock?

A They stayed in a separate room where the safe
was - and the safe was always locked.

Q On the first floor?

A On the first floor.

Q Was it a combination safe?

A Combination safe - yes, sir.

Q And you say that they maintained logs of who
entered that safe - on what occasion?

A Whenever the drawer was opened or closed
to withdraw or deposit tapes - the box containing the tapes.

MR. BEN VENISTE: We have never seen such a log,
Your Honor, and I would ask White House Counsel whether they
have ever seen one and if they have we would appreciate a

Q You removed tapes from the safe?

A Yes, sir.

Q And Miss Woods also removed them?

A (Pause) I believe that I was the only one who removed tapes from the safe.

Q In that case, why would Miss Woods' name be on the log as you recall having seen it?

A I am not sure of that. I think they logged her name when the two of us would go back to the safe and would look in there.

Q I see.

A But as far as opening the safe, I was the only person who did that - quite frankly, because I was the only one who knew how.

Q And the log would reflect the tape that was removed?

A No, sir.

Q It would just show a tape removed?

A No sir -- the Secret Service Agent who was on duty there theoretically had no knowledge of the contents of the safe so -- or of what Miss Woods was doing in the front room. The door was generally kept closed and I deposited items in the safe or withdraw them and they were in envelopes - about ten by thirteen envelopes.
tapes

Q How many tapes do you recall withdrawing

was making a transcription or was reviewing and 2372
taking notes. However, upon being notified by Miss Woods
that she was ready for another tape, I would come over
and cue another tape for her.

Q Now who had the combination to the safe?

A Miss Woods and I.

Q And did the Secret Service Agent who was there
have the combination also?

A No - he did not.

Q And the GSA gentleman who came over and gave
you the combination - I take it - left after he had done so
is that correct?

A Yes, I believe so.

Q Did you give anyone else the combination to
that safe that weekend?

A No - I did not.

Q Can you tell us whether you discussed the
matter of the summarization or transcription of the tapes
or anything to do with the tapes, with anyone that weekend,
in addition to Miss Woods?

A I don't recall any discussion of that nature.

Q Pardon me?

A I do not recall any discussion of that
nature, no, sir.

Q To your knowledge, who knew that the tapes would

THE COURT: Well, I am not going to give you my recollection, because first of all it is not very good. Let's get back on the track here, so to speak.

What is the purpose of this?

MR. BEN-VENISTE: To see whether anything was taken out of that villa that weekend, Your Honor.

THE COURT: You used anything? What was kept in this safe? Has that been explained, outside of tapes?

THE WITNESS: I have not, Your Honor.

THE COURT: Do you know what was kept in the safe that you had access to besides maybe the tapes?

THE WITNESS: Yes, sir, what I believe we kept in there was the tapes that were in individual envelopes, I believe we placed the tape machine in there, and I believe Miss Woods placed some envelopes in there.

THE COURT: When you went into the safe did you go in for the purpose of taking a tape out or tapes out and then returning them?

THE WITNESS: Yes, sir, that was generally what I would be doing.

THE COURT: Was that your purpose each time you opened the safe?

THE WITNESS: Generally, yes, sir.

THE COURT: Well, then what was the purpose of going in there? You went in there say on the 5th of October,

2571

1:58 a.m., safe opened by you, according to your language you went in to get the tape at 1:58 in the morning when you opened it.

THE WITNESS: No, sir, I believe I went in at 1:58 to open the safe. I didn't have a direct recollection of what I was doing.

THE COURT: And you closed it at 2:03 a.m.?

THE WITNESS: Yes, sir.

THE COURT: And you re-opened it at 2:05 a.m. the same morning and closed it at 2:11 a.m.

What he is trying to find out, I suppose, is the purpose for which you went in there.

THE WITNESS: Your Honor, I don't recall specifically what I was doing. I can only guess.

BY MR. BEN-VENISTE:

Q Did you remove any of the contents of the safe from the villa at any time on the 3rd, 4th, 5th -- on the 4th, 5th, 6th or 7th, prior to the time you packed up to leave to go back to Washington?

A I believe that I may have.

Q What do you believe you may have removed from the villa, Mr. Bull?

A An envelope containing a memorandum or something of that nature.

Q When do you recall removing the envelope?

A That is not the box and that is not the full tape and there is more writing on there than there is on any of the original tapes.

Q Do you notice that this has printed lines on it and a printed portion at the bottom, approximately a third of the box, which has Time Chart Recording Each Direction. Was that on the box that you saw at Camp David?

A I must tell you again that I was not interested in the boxes. I couldn't tell you whether that part was on it or not.

Q Were any of the boxes blank at Camp David?

A No, they were not, not to my knowledge.

Q Have you played the June 20th tape since you finished transcribing it on approximately the 1st of October?

A Over this weekend we played this part of the June 20th tape.

Q My question was whether you played the same tape that you had listened to at Camp David, the original tape?

A After November 8th, are you saying?

Q I said after October 1st.

A I played it on October 1st.

Q Did you play it on October 2nd?

A No.

Q Have you played it at any time since October 1st?

A The original?

Indistinct document retyped by
House Judiciary Committee staff

1256

Q Yes.

A No, I have not.

Q You had it in your possession until you turned it
over to General Bennett?

A That is right.

Q But you have not played it since then?

A I had no reason to play it.

Q You did bring it to Key Biscayne with you?

A They kept them together, yes.

Q They were kept in the safe at Key Biscayne?

A They were kept in a safe with a Secret Service man
sitting 12 feet from it 24 hours a day.

Q And there has been testimony that there were three
people who had access to that safe, is that correct?

A I don't know. I had access to it, Steve Bull had and
I don't know who else did.

Q Are you aware of a technician who had access to that
safe at Key Biscayne?

A I would assume a technician would have had to bring
the safe in and put it in there and set it up, but I know a
Secret Service man didn't let a technician come in and take any
tapes out.

Q How do you know that?

A Because the Secret Service, I do think, have a better
reputation than that.

Indistinct document retyped by
House Judiciary Committee staff

Safe Access Log

10/4/73

Post Instructions: Access only to Steve
Bull & Rose Woods

4:53 pm - Agent Chee^{ROC}le assumed post
responsibility. (Steve Bull & Rose Woods @ Villa)

5:01 pm - Safe opened by Steve Bull

5:08 pm - " closed " " "

6:21 pm - Agent Williams^{WWS} relieved Agent Chee^{ROC}le

7:10 PM - SAFE OPENED BY STEVE BULL.

7:12 PM - SAFE CLOSED BY STEVE BULL.

9:35 PM - AGENT JONES^{JN} RELIEVED AGENT WILLIAMS^{WWS}

11:10 PM - AGENT JONES RELIEVED BY AGENT DOMENICO^{DOM}

12.00 AM: Safe Secure - SA. Domenico *[Signature]*

[Signature]
23

SAFE ACCESS LOG

10-5-73.

POST INSTRUCTIONS: Access only to ROSE Woods
AND STEVE BULL.

12:01 AM. AGENT DOMENICO CONT. ON DUTY
1:58 AM SAFE OPENED BY STEVE BULL.
2:03 AM SAFE CLOSED BY STEVE BULL.
2:05 AM SAFE OPENED BY STEVE BULL.
2:11 AM SAFE CLOSED BY STEVE BULL.
7:02 AM. AGENT DOMENICO ^{rel} RELIEVED BY.
AGENT SHAW ^{JPS}
9:33 AM SAFE OPENED BY STEVE BULL.
9:36 AM SAFE CLOSED BY STEVE BULL. ^{JAR}
12:10 PM AGENT SHAW RELIEVED BY AGENT RENZI ^{JPS}
2:25 PM AGENT RENZI RELIEVED BY ^{JOE Kennedy}
^{in the presence}
^{of R. Woods & J. Kennedy}
8:08 PM SAFE OPENED BY DANN MERRYMAN (WHA)
8:09 PM SAFE CLOSED BY ROSE Woods
8:13 PM SAFE OPENED BY ROSE Woods
8:14 PM SAFE CLOSED BY ROSE Woods ^{sh}
11:05 PM AGENT Kennedy ^{rel} RELIEVED BY AGENT STEVE BULL ^W
11:07 PM SAFE OPENED BY ROSE Woods ^W

Access only To Rose Woods + Steve Bull
SAFE Access Log

10-6-73

12:45AM SAFE CLOSED BY ROSE WOODS.

7:00AM SA Howell^{Sh} Relieved SA Leonard Egan

10:01AM SAFE OPENED BY STEVE BULL.

10:06AM SAFE LOCKED BY STEVE BULL.

10:41AM SAFE OPENED BY STEVE BULL.

10:53AM SAFE LOCKED BY STEVE BULL.

11:08AM SA EGAN RELIEVED BY SA P. WATKINS

11:50AM SAFE OPENED BY STEVE BULL.

11:55 AM SAFE LOCKED BY STEVE BULL.

2:50 PM SA J. Green^{JK} relieved SA Watkins

7:06 PM SAFE OPENED BY STEVE BULL

7:09 PM SAFE LOCKED BY STEVE BULL

7:51 PM SA Chen^{ROC} relieved SA Glynn^{JK}

11:06 PM SA Cleary^{MB} relieved SA Chen^{ROC}

hml
RB

10-7-73

12:01 AM AGENT CLEARY CONT ON DUTY
7:00 AM SAC^{MSB} CLEARY RELIEVED BY SA DONALD^{GA2}
9:36 AM SAFE opened by Rose Woods²⁸⁸
11:26 AM SA DONALD^{GA2} relieved by SA G. GRIFFIN^{Was}
2:45 PM SA GRIFFIN²⁸⁸ relieved by SA C. Williams
5:04 PM - STEVE BULL REMOVED ALL
ITEMS FROM SAFE.
POST DISCONTINUED
BY SA. C. M. WILLIAMS

RB

ml

1-17-74

Received from LOUIS B. SIMS, U. S.
Secret Service, 4 pages, Safe Access Log
10-4-73 through 10-7-73. (Original)

James P Capitanio
Deputy Clerk

Witness

Robert R Burke
(ROBERT R. BURKE)

54. Richardson has stated that in late September or early October 1973 he met with the President regarding the Agnew matter. Richardson has stated that the President said that now that they had disposed of that matter, they could go ahead and get rid of Cox.

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54.1 Elliot Richardson affidavit, submitted to House
Judiciary Committee, June 17, 1974..... 738

HOUSE OF REPRESENTATIVES
OF THE UNITED STATES
COMMITTEE ON THE JUDICIARY

A F F I D A V I T

DISTRICT OF COLUMBIA, ss:

ELLIOT RICHARDSON, being duly sworn, in response to specific points of interest to counsel for the House Committee on the Judiciary, deposes and says:

1. From May 25, 1973 to October 20, 1973 I served as the Attorney General of the United States. While I held that position I had conversations with the President and others relating to the work of the Watergate Special Prosecution Force. This affidavit contains information relating to certain of those conversations and supplements my testimony in November, 1973 before the Senate Judiciary Committee.

2. On May 25, 1973, just before my swearing in as Attorney General of the United States, I had a brief conversation with the President in the Oval Office. The President referred to his statement of May 22, 1973 relating to the waiver of executive privilege as to testimony concerning Watergate, and told me that his statement did not mean that there would be any such waiver of executive privilege as to documents. I was not aware until then that the word "testimony" had been used advisedly in the President's May 22nd statement. I did not say anything in response to what the President told me.

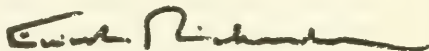
3. On July 3, 1973 General Haig, the President's Chief of Staff, called me about a Los Angeles Times story that Mr. Cox was investigating expenditures related to the "Western White House" at San Clemente. I called Mr. Cox, who said that he was not investigating San Clemente. Mr. Cox explained that he had asked his press officer to assemble press clippings on San Clemente after Mr. Cox was questioned about San Clemente at a press conference. The press officer requested clippings from the Los Angeles Times, which had carried most of the articles. I called General Haig back and told him this. He said that I ought to get a statement from Mr. Cox saying that Mr. Cox was not investigating the matter. General Haig said that he was not sure the President was not going to move on this to discharge Mr. Cox, and that it could not be a matter of Cox's charter to investigate the President of the United States. I called Mr. Cox, who agreed to make a statement. Some time after 1:00 p.m. I called back General Haig, who said the statement was inadequate. At this point the President broke in on the conversation. The President said that he wanted a statement by Mr. Cox making it clear that Mr. Cox was not investigating San Clemente, and he wanted it by two o'clock.

4. On July 23, 1973 General Haig called and told me that the "boss" was very "uptight" about Cox and complained about various of his activities, including letters to the IRS and the Secret Service from the Special Prosecutor's office seeking information on guidelines for electronic surveillance. General Haig told me that "if we have to have a confrontation we will have it." General Haig said that the President wanted "a tight line

-3-

drawn with no further mistakes," and that "if Cox does not agree, we will get rid of Cox." In this instance Mr. Cox agreed that the requests for information contained in the letters sent by his office to Treasury Department agencies had been over-broadly stated.

5. In late September or early October 1973 I met with the President in regard to the Agnew matter. After we had finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in substance, "Now that we have disposed of that matter, we can go ahead and get rid of Cox." There was nothing more said.

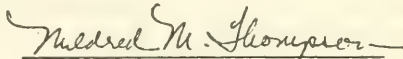


Elliot Richardson

DATED:

June 17, 1974

Subscribed and sworn to before me this 17th day of June, 1974.



Notary Public

My commission expires Dec. 14, 1975

55. On October 11, 1973 Special Prosecutor Cox filed an indictment against Egil Krogh charging him with making false declarations before the District of Columbia Grand Jury. The indictment charged that Krogh had given false answers when questioned about his knowledge of E. Howard Hunt's and Gordon Liddy's travels to California for the White House.

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55.1 <u>United States v. Krogh</u> indictment, October 11, 1973.....	742
55.2 <u>United States v. Krogh</u> docket.....	746

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA)

v.)

EGIL KROGH, JR.)

Defendant.)

Criminal No. 65-77

Violation of 18 U.S.C. §1623
(False declarations)INDICTMENTCOUNT ONE

The Grand Jury Charges:

1. On or about August 28, 1972, in the District of Columbia, EGIL KROGH, JR., the DEFENDANT, having duly taken an oath that he would testify truthfully, and while testifying in a proceeding before and ancillary to a Grand Jury of the United States, duly empanelled and sworn in the United States District Court for the District of Columbia, did make false material declarations as hereinafter set forth.

2. At the time and place alleged, the said Grand Jury was conducting an investigation in conjunction with the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation to determine whether violations of 18 U.S.C. 371, 2511, and 22 D.C. Code. 1801(b) and other statutes of the United States and of the District of Columbia had been committed in the District of Columbia and elsewhere, and to identify the individual or individuals who had committed, caused the commission of, or conspired to commit such violations.

55.1 UNITED STATES v. KROGH INDICTMENT, OCTOBER 11, 1973

3. It was material to the said investigation that the Grand Jury ascertain the nature of the activities engaged in by E. Howard Hunt, Jr., a subject of the investigation, while he was employed at the White House during 1971 and 1972, and the identity of the individual or individuals who directed those activities.

4. At the time and place alleged, the DEFENDANT, appearing as a witness under oath at a proceeding before and ancillary to the said Grand Jury, did knowingly declare with respect to the material matter alleged in paragraph 3 as follows:

Q. I see. Do you have any knowledge of any travel that Mr. Hunt made in connection with the declassification of the "Pentagon Papers" or the narcotics program that he was working with you on?

A. I'm aware of the trip to Texas that he took, but other travel, no.

Q. During any other period while Mr. Hunt was working at the White House, which would have been through, I believe, the end of March, 1972, are you aware of any travel that he made for the White House?

A. No, I'm not.

Q. Are you aware of any travel that Mr. Hunt made, whether he made it for himself personally, or for any other person?

A. No, I'm not.

5. The underscored portions of the declarations quoted in paragraph 4, made by the DEFENDANT, as he then and there

well knew, were (1se.

All in violation of Title 18, United States Code,
Section 1623.

COUNT TWO

The Grand Jury further charges:

1. The Grand Jury realleges all of the allegations of paragraphs 1 and 2 of Count One of this indictment.

2. It was material to the said investigation that the Grand Jury ascertain the nature of the activities engaged in by G. Gordon Liddy, a subject of the investigation, while he was employed at the White House during 1971, and the identity of the individual or individuals who directed those activities.

3. At the time and place alleged, the DEFENDANT, appearing as a witness under oath at a proceeding before and ancillary to the said Grand Jury, did knowingly declare with respect to the material matter alleged in paragraph 2 as follows:

Q. Now, what travel did Mr. Liddy do while he was at the White House that you're aware of?

A. He made a trip to California for me on some customs matters, customs issues on narcotics, which was more of an in-house watchdog-type of trip to determine the effectiveness of the program out there.

He had been involved in developing Operation Intercept in 1969, which pretty much was located out of the Los Angeles area, Terminal Island.

And this was an out date, so to speak, on how things were going in Los Angeles area.

Q. N , he was supposed to cont t
custom officials in the Los Angeles --

A. That was my understanding, but he did
not give me an itinerary of --

Q. Was there a report filed by him with
you of the trip?

A. No, just an oral report.

Q. Oral?

A. Right.

Q. Now, do you know of any other travel
that Mr. Liddy might have performed --

A. No.

Q. -- for the White House or for anyone
else, or for himself?

A. No.

* * * *

Q. Other than this one trip to California,
can you think of any reason why he would have
had to travel to California for the White House?


A. No.

4. The underscored portions of the declarations quoted
in paragraph 3 made by the DEFENDANT, as he then and there
well knew, were false.

All in violation of Title 18, United States Code,
Section 1623.

A True Bill


Foreman



ARCHIBALD COX
Special Prosecutor

56. On October 12, 1973 the United States Court of Appeals for the District of Columbia Circuit ordered the President to turn over the recordings subpoenaed by the Grand Jury to Judge Sirica for an in camera inspection or to submit a statement setting forth any claim that certain material should not be disclosed because the subject matter related to national defense or foreign relations or was otherwise privileged. The Court stayed its order for five days to afford the President an opportunity to seek Supreme Court review.

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56.1 Judgement and Opinion, October 12, 1973, <u>Nixon v. Sirica</u> , 37-41.....	748

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1962

September Term, 1972

Richard M. Nixon, President
of the United States,
Petitioner

v.

The Honorable John J. Sirica,
United States District Judge,
Respondent
and Archibald Cox, Special Prosecutor,
Watergate Special Prosecution Force, Party
in interest

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 12 1973

No. 73-1967
United States of America

HUGH E. KLINE
CLERK

v.

The Honorable John J. Sirica, Chief Judge,
United States District Court for the
District of Columbia, Respondent
and Richard M. Nixon, President of the
United States, Party in Interest

No. 73-1989

In Re: Grand Jury Proceedings

Miscellaneous 47-73

PETITIONS FOR WRITS OF HABEAS CORPUS AND APPEAL

Before: Bazelon, Chief Judge, and Wright, McConan, Leventhal,
Robinson, MacKinnon and Wilkey, Circuit Judges, sitting
en banc.

J U D G M E N T

These causes came on for consideration on petitions for
writs of mandamus and an appeal from an order of the United
States District Court for the District of Columbia and the
court sitting en banc heard argument of counsel. On consideration
of the foregoing, it is

ORDERED AND ADJUDGED by this court en banc that the petition
and appeal of the United States are dismissed, and it is

FURTHER ORDERED AND ADJUDGED by this court en banc that the
President's petition is denied, except in so far as the
District Court is directed to modify its order and to conduct
further proceedings in a manner not inconsistent with the
opinion filed herein this date.

The issuance of the mandate is stayed for five days from the
date of this judgment to permit the seeking of Supreme Court
review of the issues on which this court has date in making
its decision.

For Clerk
For the Court
Hugh E. Kline
Clerk

Date: October 12, 1973

Opinion for Circuit.

Opinion filed by Circuit Judge Bazelon, concurring in part and dissenting
in part.

Opinion filed by Circuit Judge Wilkey, concurring in part and dissenting
in part.

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1962

RICHARD M. NIXON, President of the United States,
PETITIONER

v.

The Honorable JOHN J. SIRICA,
United States District Judge, RESPONDENT

and

ARCHIBALD COX, Special Prosecutor, Watergate Special
Prosecution Force, PARTY IN INTEREST

No. 73-1967

UNITED STATES OF AMERICA, PETITIONER

v.

The Honorable JOHN J. SIRICA, Chief Judge, United States
District Court for the District of Columbia, RESPONDENT

and

RICHARD M. NIXON, President of the United States,
PARTY IN INTEREST

No. 73-1989

IN RE: GRAND JURY PROCEEDINGS

Petitions for Writs of Mandamus and Appeal

Decided October 12, 1973

Mink noted that the case might proceed by the Government's disclosing portions of the contested documents,⁶⁶ and also noted an instance in which the "United States offered to file an abstract of factual information contained in the contested documents [FBI reports]." ⁶⁷ We think that the District Judge and counsel can illuminate the key issue of what is "inextricable" by cultivating the partial excision and "factual abstract" approaches noted in *Mink*.

The District Court contemplated that "privileged portions may be excised so that only unprivileged matter goes before the grand jury." Even in a case of such intermingling as, for example, comment on Watergate matters that is "pungent," once counsel, or the District Judge, has listened to the tape recording of a conversation, he has an ability to present only its relevant portions, much like a bystander who heard the conversation and is called to testify. He may give the grand jury portions relevant to Watergate, by using excerpts in part and summaries in part, in such a way as not to divulge aspects that reflect the pungency of candor or are otherwise entitled to confidential treatment. It is not so long ago that appellate courts routinely decided cases without an exact transcript, but on an order of the trial judge settling what was given as evidence.

VI.

We contemplate a procedure in the District Court, following the issuance of our mandate, that follows the path delineated in *Reynolds*, *Mink*, and by this Court in *Vaughn*

⁶⁶ *Supra* note 35, 410 U.S. at 93.

⁶⁷ *Id.* at 88, citing *United States v. Cotton Valley Comm.*, 9 F.R.D. 719, 720 (W.D. La. 1949), *aff'd by equally divided court*, 339 U.S. 940 (1950).

v. *Rosen*.⁹⁸ With the rejection of his all-embracing claim of prerogative, the President will have an opportunity to present more particular claims of privilege, if accompanied by an analysis in manageable segments.

Without compromising the confidentiality of the information, the analysis should contain descriptions specific enough to identify the basis of the particular claim or claims.

1. In so far as the President makes a claim that certain material may not be disclosed because the subject matter relates to national defense or foreign relations, he may decline to transmit that portion of the material and ask the District Court to reconsider whether *in camera* inspection of the material is necessary. The Special Prosecutor is entitled to inspect the claim and showing and may be heard thereon, in chambers. If the judge sustains the privilege, the text of the government's statement will be preserved in the Court's record under seal.

2. The President will present to the District Court all other items covered by the order, with specification of which segments he believes may be disclosed and which not. This can be accomplished by itemizing and indexing the material, and correlating indexed items with particular claims of privilege.⁹⁹ On request of either counsel, the District Court shall hold a hearing in chambers on the claims. Thereafter the Court shall itself inspect the disputed items.

Given the nature of the inquiry that this inspection involves, the District Court may give the Special Prosecutor access to the material for the limited purpose of aiding the Court in determining the relevance of the

⁹⁸ Slip Opinion No. 73-1039 (D.C. Cir. August 20, 1973).

⁹⁹ *See id.* at 17.

material to the grand jury's investigations. Counsels' arguments directed to the specifics of the portions of material in dispute may help the District Court immeasurably in making its difficult and necessarily detailed decisions. Moreover, the preliminary indexing will have eliminated any danger of disclosing peculiarly sensitive national security matters. And, here, any concern over confidentiality is minimized by the Attorney General's designation of a distinguished and reflective counsel as Special Prosecutor. If, however, the Court decides to allow access to the Special Prosecutor, it should, upon request, stay its action in order to allow sufficient time for application for a stay to this Court.

Following the *in camera* hearing and inspection, the District Court may determine as to any items (a) to allow the particular claim of privilege in full; (b) to order disclosure to the grand jury of all or a segment of the item or items; or, when segmentation is impossible, (c) to fashion a complete statement for the grand jury of those portions of an item that bear on possible criminality. The District Court shall provide a reasonable stay to allow the President an opportunity to appeal.¹⁰⁰ In case of an appeal to this Court of an order either allowing or refusing disclosure, this Court will

¹⁰⁰ Since the subpoenaed recordings will already have been submitted to the District Court, the opportunity to test the court's ruling in contempt proceedings would be foreclosed. And any ruling adverse to the Special Prosecutor would clearly be a pretrial "decision or order . . . suppressing or excluding evidence . . . in a criminal proceeding . . ." Thus the District Court's ruling on particularized claims would be appealable by the President as final judgments under 28 U.S.C. § 1291 (1970), and by the Special Prosecutor under 18 U.S.C. § 3731 (1970). See *United States v. Ryan*, 402 U.S. 530, 533 (1971); *Pertman v. United States*, 247 U.S. 7, 12-13 (1918); *United States v. Calandra*, 455 F.2d 750, 751-53 (6th Cir. 1972).

provide for sealed records and confidentiality in presentation.

VII.

We end, as we began, by emphasizing the extraordinary nature of this case. We have attempted to decide no more than the problem before us—a problem that takes its unique shape from the grand jury's compelling showing of need.¹⁰¹ The procedures we have provided require thorough deliberation by the District Court before even this need may be satisfied. Opportunity for appeal, on a sealed record, is assured.

We cannot, therefore, agree with the assertion of the President that the District Court's order threatens "the continued existence of the Presidency as a functioning

¹⁰¹ Judge Wilkey, in dissent, adheres to the abstract in his discussion of who has the right to decide; he makes no reference to the facts before us framing that issue. John Marshall addressed it in the context of President Jefferson's decision to reveal the contents of a private letter to the extent of characterizing it, in a message to Congress, as containing overwhelming evidence of Burr's treason. So here, we must deal with that issue not in a void but against the background of a decision by the President, made and announced before the existence of the tapes was publicly known, to permit participants in private conversations with him to testify publicly as to what was said about Watergate and its aftermath. That decision—and the resulting testimony containing conflicts as to both fact and inference—has made it possible for the Special Prosecutor to make a powerful showing of the relevance and importance of the tapes to the grand jury's discharge of its responsibilities. What the courts are now called upon primarily to decide, as distinct from what the President has already decided with respect to the relative importance of preserving the confidentiality of these particular conversations, is how to reconcile the need of the United States, by its grand jury, with the legitimate interest of the President in not disclosing those portions of the tapes that may deal with unrelated matters.

institution."¹⁰² As we view the case, the order represents an unusual and limited requirement that the President produce material evidence. We think this required by law, and by the rule that even the Chief Executive is subject to the mandate of the law when he has no valid claim of privilege.

The petition and appeal of the United States are dismissed. The President's petition is denied, except in so far as we direct the District Court to modify its order and to conduct further proceedings in a manner not inconsistent with this opinion.

The issuance of our mandate is stayed for five days to permit the seeking of Supreme Court review of the issues with which we have dealt in making our decision.

So Ordered

¹⁰² Brief of Petitioner Nixon at 94.

57. On October 15, 1973 Richardson met with Haig and other Presidential aides to discuss the tapes litigation between the Special Prosecutor and the White House. There was discussion of a proposal to produce a version of the tapes and then fire Cox. Richardson has testified that he said he would resign if such a proposal were carried out and according to Haig the proposal was dropped on that day. There was then discussion of the President's proposal to ask Senator John Stennis to listen to the tapes and verify the competence and accuracy of a record of all pertinent portions. Richardson agreed to seek to persuade Cox that the Stennis proposal was a reasonable way of dealing with the subpoenaed tapes. On the afternoon of the 15th, Richardson met with Cox and outlined to him the Stennis proposal. Richardson also suggested to Cox that the question of other tapes and documents not covered by the subpoena of July 23, 1973 be deferred.

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COX FIRING/ELR RESIGNATION

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TAB A

ATTORNEY GENERAL'S SCHEDULE—MONDAY, OCTOBER 15, 1973

- 9:00 White House: General Haig and Mr. Buzhardt.
- 11:45 AG: Budget Appeals Meeting—Messrs. Pommerening, Danziger and RGD.
- 12:00 AG: Budget Appeals Meeting—Messrs. Pommerening, Danziger, and Santarelli.
- 3:00 AG: Budget Appeals Meeting—Messrs. Pommerening, Kauper, and staff.
- 4:00 White House: General Haig and Mr. Buzhardt.
- 6:00 AG: Archibald Cox.
- 7:30 White House: (black tie) dinner for Secretary Rogers and Mrs. Rogers.

NEW YORK CITY—OCTOBER 16, 1973

- 9:00 AG: P.A. Meeting.
- 10:00 AG: A. Cox.
- 11:30 a.m. Leave National on AA 358 with RGD (first-class) & J. Hushen.
- 12:26 p.m. Arrived La Guardia. Met by New York Commissioner of Investigations, Nicholas Scopetta, and Deputy Commissioner, William McCarthy, with David Maxwell of FBI.
- 1:00–1:30 Stop by U.S. Attorney's office (Paul Curran), Rm. 401, Floey.
- 1:45 p.m. Approximate arrival new Police Headquarters, Foley Square.
- 2:30–3:15 Dedication Ceremony of new Police Headquarters. Walter Curley, City Commissioner of Public Events, is Master of Ceremonies. Remarks by Police Commissioner Cawley and the Mayor. The Mayor, the Police Commissioner, and ELR will set corner stone and cut ribbon. ELR will speak (introduced by Mr. Curley).
- 3:15 p.m.–3:30 Press availability.
- 3:45 p.m. Short tour of building.
- 4:00 p.m. Police helicopter to La Guardia.
- 4:30 p.m. Leave La Guardia on AA 632 with RGD.
- 5:29 p.m. Arrive National.
- 6:00 p.m. Staff—J.M., J.T.S., R.G.D.
- FBI, New York office: 212–LE 5–7700 (John Malone, Assist. Dir. in Charge).
- Mayor's office: 212–566–1000.
- Jay Kriegel, Sp. Counsel: 212–566–1950.
- U.S. Attorney's office: 212–264–6118.

WEDNESDAY, OCTOBER 17, 1973

- 9:00 AG: P.A. Meeting.
- 9:30 AG: REM.
- 12:10 AG: Fred Buzhardt.
- 12:45–1:05 AG Conf. Room: Meeting with 17 U.S. Attorneys, WDR, REM, Phil Modlin and Jerry Fine.
- 1:00 State Dept.: Lunch with Dr. Kissinger.
- 3:00 AG: Budget Appeals Meeting—FBI Chief Kelley and staff.
- 3:30 AG: Fred Buzhardt.
- 4:00 AG: Budget Appeals Meeting—DEA Mr. Bartels and staff.

eign affairs and national security agencies. Rather, it involves the preservation of the basic ability of the executive branch to continue to function and perform the responsibilities assigned to it by the Constitution. Unless privacy in the preliminary exchange of views between personnel of the Executive agencies can be maintained, the healthy expression of opinion and the frank, forthright interplay of ideas that are essential to sound policy and effective administration cannot survive.

RICHARD NIXON

The White House,
October 23, 1973.

Presidential Tapes

*News Conference of Alexander M. Haig, Jr.,
Assistant to the President, and Charles Alan Wright,
Consultant to the Counsel to the President, on the
President's Decision To Comply With Court
Order Requiring Production of the Tapes.
October 23, 1973*

MR. ZIEGLER. Ladies and gentlemen, in light of today's events, I thought it would be worthwhile to have Professor Charles Wright, who has been consulting with the White House Counsel's office, to come before you today to make some remarks and take some of your questions, and also the Assistant to the President, Al Haig, who has participated in the events of the past week, together with other members of the White House staff.

But first, before we go to their remarks and give them an opportunity to answer some of your questions, I would like to announce that tomorrow night at 9 p.m., eastern time, President Nixon will address the Nation on the recent events, including today's decision. The President's address will be carried on live television and radio.¹

I think we will begin with General Haig, who can outline for you, first of all, some of the events of the past week that led to this decision, and then Professor Wright can discuss some of the matters relating to the court procedures, and then we can go to questions for a while. General Haig.

GENERAL HAIG. Ladies and gentlemen, what I thought I would try to do this afternoon is try to put some perspective on what one journalist has referred to as the firestorm, and try, to the degree I can, to present to you and the American people some of the considerations that led up to the events of this past weekend and culminated in today's Presidential decision, and in doing that I think it is quite important that we go back in time a bit to a period of the weekend before last.

¹ On Wednesday, October 24, the White House announced that, because of his concentration on developments in the Middle East, the President would not address the Nation that evening but would later hold a televised news conference. For the President's news conference of October 26, see page 1287 of this issue.

And it was at this juncture that the President, after very careful consideration and full consultation with his advisers, especially those on his legal staff, determined that he would make a herculean effort to resolve what had become a highly profiled and extremely controversial issue; that is, the issue surrounding the data and the information contained on the Presidential tapes of conversations which took place with various individuals in the President's office here in the White House and in the Executive Office Building.

Now, there were two factors that led the President to conclude that the time had come to resolve this very, very controversial issue. One of them involved the domestic scene itself, and the storm of controversy that raged around this issue.

I don't think it requires a blueprint for this group here to emphasize that the issue itself had progressively begun to polarize our body politic. Lines were clearly being drawn both within the Congress, within the media, and I think to a large extent within the viewpoint of the American people themselves.

There were such tales being bandied about that the recent nomination of a new Vice President would be held in hostage to a Supreme Court decision on the tapes issue, and the President to defy the court, then we would move with an impeachment against the President, and with no Vice President there would be a turnover of the Government to a party which did not win November's election.

Now these kinds of considerations, and the realization on our part here that the period of time between the decision of the appellate court and the adjudication of this issue by the Supreme Court would result in even more intense political line-drawing, more intense disunity, and more intense doubt and conflict here at home, and that was certainly a major consideration in the President's determination to try to find a solution in the interest of the overall good of the American people.

Now, there were also international implications of some gravity which led to this Presidential decision. I want to say this very carefully and very precisely, but certainly, certainly any foreign leader, whether he be friend or potential foe, must in a period of turmoil here at home make his calculations about the unity, the permanency, the strength and resilience of this Government in a way that had to take consideration of this tape issue into mind.

Now, what I am not saying, gentlemen and ladies, is that the tape issue brought about international crisis of any kind or was, perhaps, the cause for the Middle East tension which was resolved so happily in recent hours. But what I am saying is that any foreign leader who assesses this Government and its relationships with this Government, whether it be in negotiations or long-term assessments, has got to perceive that the degree of unity and effectiveness of this Government is a key factor in those calculations, and indeed it is; it always is.

GENERAL HAIG. I think the question even is a little difficult the way it is posed.

The decision to provide the third-party transcripts of the nine tapes, plus the tape requested by the Senate committee, the overlap tape, would have given Professor Cox the tapes he had requested. What the President's order was involved with was subsequent requests, through the judicial process, for Presidential tapes and memoranda and documents covering personal discussions, private discussions of the President, as distinct from the portrayal of that inhibition on Saturday during Professor Cox's press briefing.

Q. Are you saying that he was not barred from seeking the actual nine tape recordings beyond the summaries you were going to furnish?

PROFESSOR WRIGHT. The answer to that question is yes, he was barred by the compromise, not by the dicta, the memoranda, the compromise, but you will recall that the court itself had already deprived Professor Cox, in two rulings, of access to the tapes.

Q. Will national security information be withheld from the courts? Is there any part of these nine or ten tapes now which contains national security information and which will not be turned over to Judge Sirica?

PROFESSOR WRIGHT. I am informed that there is at least one tape, perhaps more, that contain national security information. The Court of Appeals order is that where we believe that there is anything that regards national security, that we should make a submission to Judge Sirica in chambers as to why we believe this involves the national security, that if he accepts our decision on that, that portion of the tape is excised. If he does not, the relevant showing is sealed, and we are allowed to take an appeal to the Court of Appeals on whether it truly was or was not national security.

Q. Does that one tape apply to the Ellsberg case?

PROFESSOR WRIGHT. I have no idea what it applies to.

Q. Are you saying you don't know or it does not?

PROFESSOR WRIGHT. I don't know.

Q. The same portion of that statement you referred to also provides for a special prosecutor to argue whether or not that statement that you make is correct. Who will now argue for that?

PROFESSOR WRIGHT. I would assume that the Department of Justice would.

Q. General Haig and Mr. Wright, is it your understanding that the President's instruction to Mr. Cox, as the President stated it in his Friday night statement, stands as his instruction to the Acting Attorney General and to Mr. Petersen?

GENERAL HAIG. I think that is a question which I am not going to address here this afternoon. It will be addressed in the very near future, but I can assure you that the President's actions in this regard will be totally within the law.

Q. General Haig and Mr. Wright, both of you, please, could you tell me if at any time either of you gentlemen participated in a meeting prior to Saturday, prior to Friday night, at which you advocated the firing of Professor Cox? There have been reports, and in fact Mr. Richardson said that, I believe, counsels and other staff people had indeed done this.

GENERAL HAIG. I think I will answer that question very clearly for you.

As I told you on Monday morning, following a weekend decision by the President to seek a compromise, and as Elliot Richardson so stated this morning, a number of options were discussed and considered, including the Bickel theory, including the Bickel theory, which would have involved the mooted of the issue through the separation of a member of the executive branch from that branch.

So the answer to that question is yes, that was an option discussed, but was rejected on Monday morning at that meeting. It was unacceptable to a number of people in the discussion. Now I am divulging to you discussions held on Monday morning.

Q. General Haig, can you tell us if the telegram from Senator Ervin was addressed today, and if so, is there a response to the telegram, his understanding of the arrangements Friday for disclosure of the material on the tapes to the committee?

GENERAL HAIG. Gentlemen, I am sorry; I have not seen the telegram, and I cannot comment on it.

Q. Will the President allow a full and vigorous investigation, and if necessary, prosecution of other matters that the Special Prosecutor was investigating, specifically the IT&T, or the dairymen's contribution, the \$100,000 Hughes contribution via Bebe Rebozo?

GENERAL HAIG. I think I wouldn't necessarily accept your litany of problem areas, but I think we have made it very clear that what the prosecuting team—

Q. Excuse me. These were the things that press reports have stated the Special Prosecutor—

GENERAL HAIG. I think Elliot Richardson commented on this very question this morning at great length, and he is far more qualified than I to give you a precise answer. But the answer to your question is that we intend to proceed vigorously with all of the ongoing investigations, and if prosecution is the result of those investigations, to pursue that prosecution with the same vigor and objectivity.

Q. You seem to gloss over a period as between Saturday, when your position was Course A and suddenly Monday morning when your position was Course B. Could you specify those specific things on the President's mind which, in fact, accounted for the change today? Was it impeachment, for example? Was it the surprise of Elliot Richardson resigning? Would you expand on that?

GENERAL HAIG. No, I think it was the whole milieu of national concern and, quite frankly, a great deal of con-

Senator TUNNEY. I am just wondering about Mr. Richardson's time.

Senator KENNEDY. I think there are probably other questions.

Senator TUNNEY. I have a few other questions, but I don't want to press Mr. Richardson.

Mr. RICHARDSON. I would be willing to stay or I can come back. I can make time to come back if the committee would like to have me. I would just as soon finish. You have other witnesses and matters to deal with. Or, if you would like to finish this afternoon, I would certainly be glad to stay.

Senator TUNNEY. I have just a few other questions I want to ask.

Senator HRUSKA. I will forego any further questions out of deference to the Senator.

Senator KENNEDY. I would say there are other Senators who are not here who indicated they have questions, so I would expect that Mr. Richardson would be invited back.

Senator TUNNEY. If Mr. Richardson is going to be invited back, I can wait until then or I can ask the questions I have now.

How do you feel, Mr. Richardson?

Mr. RICHARDSON. I would be glad to have you ask the questions you have now, and then if I need to come back I will, but if not, it may be that other Senators will decide they don't really care that much and we will have finished.

Senator TUNNEY. Thank you.

Before negotiations with the White House began on the accessibility of Presidential papers and tapes to be made available to the Special Prosecutor, Mr. Cox, it has been alleged that the White House already had decided to halt all prosecution efforts to subpoena Presidential papers even if it meant firing Mr. Cox. Do you have any information on that?

Mr. RICHARDSON. I'm sorry?

Senator TUNNEY. The question was, that before there were any negotiations between the White House and Mr. Cox and you as to the accessibility of Presidential papers, the White House had decided already to halt permanently all prosecution efforts to get Presidential papers even if that meant firing Mr. Cox. Are you aware of that? Do you have any information on that?

Mr. RICHARDSON. Yes. Well, if I follow this, there was a—as of Monday of the week which ended with Mr. Cox's firing, there was a fairly serious thought that the way to handle all this was to produce a version of the tapes and fire Cox, and this was the way to wind up the problem of Presidential involvement because the tapes would, as has been argued, constitute the best evidence, and so on. This was the so-called Bickel theory that would moot everything by eliminating anybody who would assert these claims. I thought it was totally unacceptable. And it was dropped the same day.

Senator TUNNEY. What day was that?

Mr. RICHARDSON. Monday, beginning of the week, whatever the date was. Saturday was the 20th. So it was the 15th.

Senator TUNNEY. Did you ever indicate during negotiations in the week of October 15 that you would resign if pushed to the brink of obstructing Mr. Cox's investigation, that is, by preventing him from going after additional Presidential papers?

Mr. RICHARDSON. It didn't quite come that way. I indicated that I certainly would resign if the idea that was broached on Monday, that I have just referred to, was carried out. You have now a copy of the notes I made overnight, Thursday night, with the idea that I would resign Friday morning. But at that point the issue was over going forward with the Stennis proposal and firing Mr. Cox, period. So I was prepared to resign on that account. The issue got narrowed down between Friday morning and Saturday afternoon to the residual issue of access to the documents. And so I had—my position on Friday afternoon was that the President should go forward with the Stennis proposal, that his lawyers should try to sell it to the district court, and that any questions dealing with other papers, documents, and so on, ought to be deferred until and unless they arose in the course of some other judicial proceeding. And I put that into a letter to the President on Saturday morning. It turned out—I had urged this approach on Friday. I was told Friday, late in the afternoon, that the President wouldn't buy it, that I was going to get the letter that he then sent me. I restated my position and then sent my letter on Saturday morning, but by then it was—his position was fixed.

Senator TUNNEY. But on Monday you had indicated that you would resign if there was an attempt made to fire Mr. Cox as a means of ending the question about access to Presidential papers?

Mr. RICHARDSON. Yes.

Senator TUNNEY. General Haig has said that as late as the day before Cox's dismissal, the outcome was not preplanned, not desired, indeed, I think, not very well visualized by all participants. Apparently, however, from your testimony here today, you had made it very clear that if pushed to the brink, you would resign, and the brink being the firing of Mr. Cox?

Mr. RICHARDSON. Yes. But I think that what General Haig was saying is that the President and the President's staff thought that they had come up with a way of dealing with this that would not entail firing Mr. Cox. What they left out of account was that Mr. Cox would refuse to carry out the direction not to pursue legal process and thus in effect create a confrontation which would lead to his firing anyway. When they refer to miscalculation, that was it. My position at that point was, as I said, that there was no need to provoke that confrontation, that they could and should have gone forward simply with the Stennis proposal itself as a way of handling the subpoena of the tapes.

Senator TUNNEY. I recall Mr. Cox's testimony before the committee, and my memory can be refreshed on this, he said when Mr. Wright approached him with the proposal of allowing Senator Stennis to listen to the tapes, and then not go ahead with further subpoenas for additional Presidential papers, Mr. Wright said, "I know that you are not going to accept this," or words to that effect.

Mr. RICHARDSON. Yes.

Senator TUNNEY. Apparently, it was fairly clear, at least to Mr. Wright, that Mr. Cox was being pushed to the brink and that these negotiations in fact were no longer negotiations, but an ultimatum?

Mr. RICHARDSON. Yes.

Mr. Cox's understanding of what was said to him by Mr. Wright was substantially at variance with what I thought Mr. Wright was

conclusion as a result of experience, that if we had to face up to it if the occasion arose, there simply would be inconsistency and that would be perhaps too bad, but not unprecedented within the Government as a whole.

Senator KENNEDY. I have just a couple of other areas.

I see Senator Mathias here. I can proceed on those or we can——

Senator MATHIAS. Go ahead. I'm just going to suggest one area. I understand that General Richardson will be back on Thursday, and I have one that he might carry with him when he goes.

Senator KENNEDY. Mr. Richardson, we had testimony from Mr. Cox that he felt that he was getting a message, so to speak, from the White House, at least in his conversations with you the week before the time he was actually fired. I think you read through the transcript and gathered that. What can you tell us about that? What sort of implications were you giving him when you were having conversations with him, and what were you getting from the White House that led you to believe that his days in effect were numbered? And what were the reasons?

Mr. RICHARDSON. Well, I hope they weren't numbered, but——

Senator KENNEDY. Let me just ask this. What do you believe to be the real reason why he was fired?

Mr. RICHARDSON. Well, let me deal with the first part first.

Mr. Cox indicated, I noted, that the question of some compromise on the tapes had come up on Friday before this week, but to the best of my recollection that was only in connection with some possible usefulness I might have in the interval between the handing down of the court of appeals decision which was expected any minute, and in fact did come down late that day, and eventual action by the Supreme Court of the United States, and we talked a little about the possibility of a compromise during that period and before the Supreme Court acted. That was all there was then.

I mentioned earlier in answer to a question by Senator Tunney that we had had a brief crisis on Monday morning arising over the firing of Mr. Cox. That led to the so-called Stennis proposal, and I agreed to seek to persuade Mr. Cox that this was a reasonable way of dealing with the subpoenaed tapes. I am sure I indicated to Mr. Cox on Monday afternoon that the situation was one of some stress from my point of view. I didn't want to be explicit about it because I didn't want him to feel that he was being pressured to take this deal under the threat of being fired if he wouldn't. I thought that was one sure way of leading him to conclude that the matter shouldn't even be discussed. But I indicated to him, I think, as he said, more perhaps by manner and by indirect indications that the situation had reached a critical stage, and in other conversations during the week I indicated to him that I felt under a very considerable sense of time pressure for resolution of it. But it was about that timeframe.

Senator KENNEDY. Have you made any comments on the New York Times October 23 story quoting one of your aides on your view of the President's mental health? Do you remember that reference? Were you asked about it?

Mr. RICHARDSON. No.

Senator KENNEDY. The quote said "the Attorney General was very worried about Nixon. He was not in the best psychological condi-

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District of Columbia, had ruled that the privilege protecting Presidential communications must give way to the criminal process, but only to the extent that a compelling necessity had been shown.

The President had a right of further review in the Supreme Court of the United States. He had a right, in other words, to try to persuade the Supreme Court that the long term public interest in maintaining the confidentiality of Presidential communications is more important than the public interest in the prosecution of a particular criminal case, especially where other evidence is available.

Had he insisted on exercising that right, however, the issue would have been subject to continuing litigation and controversy for a prolonged additional period, and this, at a time of acute international crisis.

Against this background, the President decided on Monday afternoon to make a new effort to resolve the impasse. He would ask Senator John Stennis, a man of impeccable reputation for truthfulness and integrity, to listen to the tapes and verify the completeness and accuracy of a record of all pertinent portions.

This record would then be available to the Grand Jury and for any other purpose for which it was needed.

Believing, however, that only the issue of his own involvement justified any breach of the principle of

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confidentiality, and wishing to avoid continuing litigation, he made it a condition of the offer to provide a verified record of the subpoenaed tapes that access to any other tapes or records would be barred.

I regarded the proposal to rely on Senator Stennis for a verified record -- for the sake of brevity I will call it the Stennis Proposal -- as reasonable, but I did not think it should be tied to the foreclosure of the right of the Special Prosecutor to invoke judicial process in future situations.

Accordingly, I outlined the Stennis Proposal to Mr. Cox later on Monday afternoon, and proposed that the question of other tapes and documents be deferred.

Mr. Cox and I discussed the Stennis Proposal again on Tuesday morning.

On Wednesday afternoon, responding to Mr. Cox's suggestion that he could deal more concretely with the proposal if he had it on paper, I sent him the document captioned "A Proposal" which he released at his Saturday press conference.

On the afternoon of the next day, he sent me his comments on the proposal, including the requirement that he have assured access to other tapes and documents. The President's lawyers regarded Mr. Cox's comments as amounting to a rejection of the Stennis Proposal, and there followed the breakoff of negotiations reflected in the correspondence with Charles Alan [unreadable].

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58. On October 17, 1973 Richardson submitted to Cox a written proposal for compromise that provided that the subpoenaed tapes would be made available to a third party verifier selected by the President. The verifier would be given a transcript that omitted continuous portions of substantial duration which clearly and in their entirety were not pertinent and would then prepare a verified transcript. The Special Prosecutor and counsel for the President would join in urging the Court to accept the verified record as a full and accurate record of all pertinent portions of the tapes. Richardson has stated that prior to submitting this document to Cox, he showed a draft to Buzhardt, and that at the urging of Buzhardt he deleted a paragraph of the proposal that stated it related only to the tapes covered by the subpoena. Richardson has stated that Buzhardt pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

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unwilling to adhere to two of the four essential principles of the investigation which the Senate demanded and to which I committed myself: First, the President appeared to be unwilling to have the Special Prosecutor push forward his challenge to claims of executive privilege. This requires some breakdown and some care in defining terms. Forgive me if I behave like a law professor, but I suppose I will because I am one, but it is important to be careful as to exactly what he is talking about.

One of the things we were talking about were tapes of conversations between the President and various members of his staff, and tapes of nine specific conversations were covered by the subpoena which I took out in the district court and which the grand jury unanimously voted to have enforced, and which Judge Sirica enforced, at least in part; and his order, with some modifications was, of course, affirmed by the Court of Appeals.

A second thing we were—well, on that I may say that an issue arose with respect to whether the tapes would be supplied and, if not, in what form, and I asked a member of the committee staff this morning to duplicate, so that you might have them, the communications first between Attorney General Richardson and myself, and then between Mr. Charles Wright and myself, with respect to the tapes. [The documents referred to follow:]

WATERGATE SPECIAL PROSECUTION FORCE,
UNITED STATES DEPARTMENT OF JUSTICE,
Washington, D.C.

- The attached are copies of correspondence and various proposals submitted by Special Prosecutor Archibald Cox, Attorney General Elliot Richardson and White House counsel concerning the White House tapes

PROPOSAL SUBMITTED BY ATTORNEY GENERAL OCTOBER 17, 1973

A PROPOSAL

The objective

The objective of this proposal is to provide a means of furnishing to the Court and the Grand Jury a complete and accurate record of the content of the tapes subpoenaed by the Special Prosecutor insofar as the conversations recorded in those tapes in any way relate to the Watergate break-in and the coverup of the break-in, to knowledge thereof on the part of anyone, and to perjury or the subornation of perjury with regard thereto.

The means

The President would select an individual (the verifier) whose wide experience, strong character, and established reputation for veracity would provide a firm basis for the confidence that he would put above any other consideration his responsibility for the completeness and accuracy of the record.

Procedure

The subpoenaed tapes would be made available to the verifier for as long as he considered necessary. He would also be provided with a preliminary record consisting of a verbatim transcript of the tapes except (a) that it would omit continuous portions of substantial duration which clearly and in their entirety were not pertinent and (b) that it would be in the third person. Omissions would be indicated by a bracketed reference to their subject matter.

With the preliminary record in hand, the verifier would listen to the entire tapes, replay portions thereof as often as necessary, and, as he saw fit, make additions to the preliminary record. The verifier would be empowered to paraphrase language whose use in its original form would in his judgment be embarrassing to the President and to paraphrase or omit references to national defense or foreign relations matters whose disclosure he believed would do real harm. The verifier would take pains in any case where paraphrased language was used to make sure that the paraphrase did not alter the sense or emphasis of the recorded conversation. Where, despite repeated replaying and adjustments of volume, the verifier could not understand the recording, he would so indicate.

Having by this process converted the preliminary record into his own verified record, the verifier would attach to it a certificate attesting to its completeness and accuracy and to his faithful observance of the procedure set forth above.

Court approval

Court approval of the proposed procedure would be sought at two stages: (a) in general terms when or soon after the verifier began his task, but *without identifying him by name*, and (b) when the verified record was delivered to the Court with the verifier's certificate. At the second stage, the Special Prosecutor and counsel for the President would join in urging the Court to accept the verified record as a full and accurate record of all pertinent portions of the tapes for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access.

Assurance against tampering

Submission of the verified record to the Court would be accompanied by such affidavits with respect to the care and custody of the tapes as would help to establish that the tapes listened to by the verifier had not at any time been altered or abbreviated.

COMMENTS ON ATTORNEY GENERAL'S PROPOSAL BY ARCHIBALD COX, OCTOBER 18, 1973

COMMENTS ON "A PROPOSAL"

The essential idea for establishing impartial but non-judicial means for providing the Special Prosecutor and grand jury with an accurate record of the content of the tapes without his participation is not unacceptable. A courtroom "victory" has no value *per se*. There should be no avoidable confrontation with the President, and I have not the slightest desire to embarrass him. Consequently, I am glad to sit down with anyone in order to work out a solution along this line if we can. I set forth below brief notes on a number of points that strike me as highly important.

1. The public cannot be fairly asked to confide so difficult and responsible a task to any one man operating in secrecy, consulting only with the White House. Nor should we be put in the position of accepting any choice made unilaterally.

2. Your idea of tying a solution into court machinery is a good one. I would carry it farther so that any persons entrusted with this responsibility were named "Special Masters" at the beginning. This would involve publicity but I do not see how the necessary public confidence can be achieved without open announcement of any agreement and of the names of the Special Masters.

3. The stated objective of the proposal is too narrow. It should include providing evidence that in any way relates to other possible criminal activity under the jurisdiction of this office.

4. I do not understand the implications of saying that the "verbatim transcript . . . would be in the third person." I do assume that the names of all speakers, of all persons addressed by name or tone, and of all persons mentioned would be included.

5. The three standards for omission probably have acceptable objectives, but they must be defined more narrowly and with greater particularity.

6. A "transcript" prepared in the manner projected might be enough for investigation by the Special Prosecutor and grand jury. If we accept such a "transcript" we would try to get it accepted by the courts (as you suggest). There must also be assurance, however, that if indictments are returned, if evidence concerning any of the nine conversations would, in our judgment, be important at the trial, and if the court will not accept our "transcript" then the evidence will be furnished to the prosecution in whatever form the trial court rules is necessary for admissibility (including as much of the original tape as the court requires). Similarly, if the court rules that a tape or any portion must be furnished a defendant or the case will be dismissed, then the tape must be supplied.

7. I am glad to see some provision for verifying the integrity of the tapes even though I reject all suggestions of tampering. Should we not go further to dispel cynicism and make provision for skilled electronic assistance in verifying the integrity of the tapes and to render intelligible, if at all possible, portions that appear inaudible or garbled?

8. We ought to have a chance to brief the Special Masters on our investigations, etc., so as to give them an adequate background. The Special Masters should be

tive social influence that are beyond the Department of Justice, and I will be happy to work on this, but you have got to remember that the Department of Justice is not a social agency and in most of these things, they are caused by a breakdown in family and community life. I am very much interested, and hope that we can work together.

Senator MATHIAS. One of the most troublesome things that has come up in the last couple of years—it came up in the Richardson confirmation, it came up in the Patrick Gray hearing, it came up in Chief Kelley's confirmation—is the maintenance of the so-called dossiers on Members of Congress.

It would seem to me that the time has long since passed for keeping these records. I would hope that you would see to it that the pledges that have been given to this committee—

Senator SAXBE. I was amazed that this practice existed. I did not even know it until I got into some of these discussions.

Senator MATHIAS. If you find that it has persisted, despite all the pledges that were given, I hope that you will dispense with it.

Senator SAXBE. I will give it immediate attention.

Senator MATHIAS. As a final word, I feel that one of the tragedies of the Boston massacre was the evidence later put before this Committee that the Attorney General, Mr. Richardson, did not have an opportunity to talk with the President personally during some of the most critical days leading up to that event. I would urge that you would maintain your rank as one of the senior members of the Cabinet to insist upon personal access to the President.

Senator SAXBE. This, he has assured me.

Senator MATHIAS. This is a critical element in the kind of service that you can render to the country, and to the President.

We wish you well.

Senator SAXBE. Thank you.

[Senator Mathias subsequently made the following material a part of the record.]

U.S. SENATE,
November 28, 1973.

HON. ELLIOT L. RICHARDSON,
McLean, Va.

DEAR ELLIOT: I note by this morning's Washington Post that you have made reference to two documents bearing on the firing of Archibald Cox which have not yet been made a part of the record of the oversight hearings of the Senate Judiciary Committee. I am wondering if you would be willing to supply me with copies of these documents for inclusion in the record.

I should also advise you that I will submit copies of these documents to General Haig for his comment in the light of the differences of opinion that have been aired publicly with respect to the circumstances under which Mr. Cox was fired.

Sincerely yours,

CHARLES McC. MATHIAS, JR.
U.S. Senator.

McLEAN, VA., November 30, 1973.

HON. CHARLES McC. MATHIAS, JR.,
U.S. Senate,
Washington, D.C.

DEAR MAC: Here, in response to your letter of November 28, are the two documents bearing on the firing of Archibald Cox which were referred to in that morning's Washington Post.

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The first document embodies my initial attempt to put in writing, at the suggestion of Mr. Cox, the proposal I had submitted to him orally. This document contains a paragraph captioned "Other Tapes and Documents" which was omitted from later drafts at the urging of Mr. J. Fred Buzhardt, who pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

The second document is a draft press release written Friday evening, October 19, immediately after I received the President's letter instructing me to direct Mr. Cox to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I held up this release upon learning that the President's letter to me had not been made public.

I would be glad to have these documents included in the record of the hearing on legislation to create the position of special prosecutor at which I recently testified.

With warm regard,
Sincerely,

ELLIOT L. RICHARDSON.

Enclosures.

THE THIRD PERSON

The cornerstone of the proposal is reliance on an individual ("the Reporter") who can be counted upon to provide a complete and accurate report of all the material portions of the tapes. Given such reliance on this individual, he must be a person of wide experience, strong character, and firmly established reputation for veracity. He must, moreover, be a person who would be recognized as putting his responsibility to the truthfulness of his report above any other considerations.

PROCEDURE

The Reporter would be furnished with a raw transcript of the tapes from which had been omitted only continuous portions of substantial duration which clearly and in their entirety were unrelated to the Watergate case or related matters. With this transcript in hand, the Reporter would listen to the entire tapes, including the omitted portions. Having replayed the tapes or portions thereof as often as necessary to satisfy him as to their content and meaning, the Reporter would prepare a report which differed from a direct and complete transcript of the tapes only in the following respects:

- (a) The conversation would be converted into the third person;
 - (b) Any continuous portion not relating to Watergate matters at all would be omitted but any such portion would be identified in brackets by general subject (e.g., "[Impoundment of appropriations]");
 - (c) Any reference to national defense or foreign relations matters whose disclosure would, in the judgment of the Reporter, do real harm and which was not otherwise omitted as part of a continuous portion would be omitted, but the report would preserve the sense of any such reference insofar as it had any conceivable relevance relationship to Watergate matters and identify the subject by a bracketed reference (e.g., "[SALT]");
 - (d) The Reporter would paraphrase language whose literal disclosure would in his judgment be seriously embarrassing to the President but would take pains to make sure that the paraphrase did not alter the sense, including the flavor or emphasis, of the original;
 - (e) At any point where, despite repeated replaying and adjustments of volume, the Reporter could not make out what was being said, the Reporter would so signify (e.g., "[Unintelligible]").
- The Reporter would preface his report with a certification under oath attesting to his faithful observance of the procedure set forth above.

COURT APPROVAL

Court approval of the proposed procedure would be sought at two stages: (a) in general terms when or soon after the Reporter began his task, but without identifying him by name, and (b) when the report was delivered to the Court with the Reporter's certificate. At the second stage, the Special Prosecutor and counsel for the President would at that time join in urging the Court to accept the report as a full and accurate record of the material portions of the tapes for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access.

OTHER TAPES AND DOCUMENTS

The proposed arrangement would undertake to cover only the tapes heretofore subpoenaed by the Watergate Grand Jury at the request of the Special Prosecutor. Any request by the Special Prosecutor for a similar report covering other tapes as well as any request by the Special Prosecutor for memoranda or other documents believed by the Special Prosecutor to deal with the same conversations covered by the proposed report would be the subject of subsequent negotiation between the Special Prosecutor and counsel for the President.

ASSURANCE AGAINST TAMPERING

Submission of the report to the Court would be accompanied by such affidavits with respect to the care and custody of the reports as would help to assure that the tapes listened to by the Reporter had not at any time been altered or curtailed.

DRAFT PRESS RELEASE

The President's decision to call on Senator Stennis to prepare an authenticated record constitutes, in my view, a reasonable and constructive compromise of the "Watergate tapes" issue. It seems to me inconsistent, however, with the explicit understandings on which the office of Special Prosecutor was created to deal now with hypothetical future attempts by Mr. Cox to invoke judicial process, and the proposal I presented to Mr. Cox this week did not attempt to do so, I plan to seek an early opportunity to discuss this approach with the President.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., December 5, 1973.

Gen. ALEXANDER M. HAIG, Jr.,
Assistant to the President, The White House,
Washington, D.C.

DEAR GENERAL HAIG: The fact that testimony given before the Senate Judiciary Committee by Elliot Richardson has been publicly disputed has been a matter of concern to members of the Committee. In view of the Committee's specific agreement with Mr. Richardson and the Administration with respect to departmental regulations creating and governing the office of Special Prosecutor, it is obviously important to know why and how the office so created was abolished.

Mr. Richardson has now made available to me, at my request, two documents not heretofore submitted for the Committee record or otherwise available to the public. These documents are described by Mr. Richardson as follows:

"The first document embodies my initial attempt to put in writing, at the suggestion of Mr. Cox, the proposal I had submitted to him orally. This document contains a paragraph captioned 'Other Tapes and Documents' which was omitted from later drafts at the urging of Mr. J. Fred Buzhardt, who pointed out that the paragraph was redundant because the proposal on its face dealt only with the subpoenaed tapes.

"The second document is a draft press release written Friday evening, October 19, immediately after I received the President's letter instructing me to direct Mr. Cox to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I held up this release upon learning that the President's letter to me had not been made public."

It is my intention to enter these documents into the record at the next meeting of the Judiciary Committee.

I might point out that the draft of the Stennis compromise prepared by Mr. Richardson and amended by Mr. Buzhardt would seem to corroborate Mr. Richardson's testimony that he had not agreed to any limitation of the authority of the Special Prosecutor during the early part of the week of October 15th. The letter from Mr. Cox to Mr. Wright dated October 19th, which is already a part of Committee record, would indicate that the matter of limiting the Special Prosecutor's authority was, however, a subject of conversation between Mr. Charles Alan Wright and Mr. Cox by that date. This again would seem to corroborate Mr. Richardson's testimony.

Since there have been conflicting versions of this story, notwithstanding this evidence, and since Mr. Richardson's telephone and appointment logs submitted

Richardson: 2 Papers

A 10 Wednesday, Nov. 28, 1973 THE WASHINGTON POST

A1, A10

By Susanna McBee
Washington Post Staff Writer

Former Attorney General Elliot L. Richardson disclosed yesterday two previously unpublished documents that appear to substantiate his version of the events that led to the firing of Archibald Cox as Watergate special prosecutor.

At issue is the position that Richardson took during the week preceding President Nixon's Oct. 20 firing of Cox for refusing to promise he would never again go to the courts to get additional White House Watergate tapes or documents.

Richardson has said consistently that he had opposed the President's action and had tried to prevent it. But Mr. Nixon and his chief of staff, Alexander M. Haig Jr., were quoted by some Republican senators as saying on Nov. 13 and 14 that Richardson was not telling the truth.

On Nov. 15 the White House issued a statement saying that Richardson had been "articulating" one of "several ver-

See RICHARDSON, A10, Col. 1

Richardson Discloses Paper:

RICHARDSON, From (A)

sions" of what happened before the Cox firing, but it denied that Mr. Nixon had actually accused him of lying.

Yet the next day Sen. Edward W. Brooke (R-Mass.) said the President had told him Richardson had agreed both to the restriction on Cox and to a compromise White House plan to let Sen. John C. Stennis (D-Miss.) listen to tapes Cox had already subpoenaed—and two courts had agreed should be produced—and submit authenticated versions of their contents to the U.S. District Court here.

"He was not telling the truth," Brooke quoted Mr. Nixon as saying of Richardson's contention that he had opposed the restriction against future court action by Cox.

In an interview with The Washington Post yesterday, Richardson said Haig called him the evening after Brooke's and other senators' reports were published to say that those reports were not true.

Haig said he and Mr. Nixon had not said that Richardson had lied, the former Attorney General said. "In that conversation he said, 'I don't disagree with anything you said in your testimony,'" Richardson

had repeated his position before the Senate Judiciary Committee on Nov. 6.

In the interview Richardson also produced a four-page draft that he had written Oct. 17 of the so-called Stennis compromise and had sent that morning to the White House. The draft indicates Richardson's approval of the compromise, which he has admitted supporting, but it adds that access by Cox to additional material would be dealt with later.

Specifically, the section, entitled "Other Tapes and Documents," says:

"The proposed arrangement would undertake to cover only the tapes heretofore subpoenaed by the Watergate grand jury at the request of the special prosecutor. Any request by the special prosecutor for a similar report covering other tapes as well as any request by the special prosecutor for

memoranda or other documents believed by the special prosecutor to deal with the same conversations covered by the proposed report would be the subject of subsequent negotiations between the special prosecutor and counsel for the President."

Richardson said the section was removed later that day by the President's counsel, J. Fred Buzhardt, who, according to Richardson, "said he omitted it because it was unnecessary."

Buzhardt "said the proposal didn't deal with anything else" besides the tapes already subpoenaed, Richardson said, "so the paragraph was redundant. So when I redrafted his redraft, I left it out. My redraft of his redraft was the document I sent Cox" that Wednesday, he added.

Cox turned down the proposal after it later became linked with the prohibition on any future court efforts to get further evidence.

Richardson also produced a press release he had written but did not make public Oct. 19, the night before Mr. Nixon fired Cox and accepted the resignations of Richardson and Deputy Attorney General William D. Ruckelshaus. Both quit rather than carry out the President's order to fire the prosecutor.

Cox was fired by Solicitor General Robert H. Bork, who is acting Attorney General.

Richardson said he wrote the press release after receiving a letter Oct. 19 from Mr. Nixon instructing him to direct Cox to make no further judicial attempts to get additional presidential material on the Watergate scandal.

The former Attorney General said the press release "confirms the fact that I had not anticipated any instructions" from Mr. Nixon to cut off Cox's court access. Richardson said he did not release the statement to the press that night as he had planned because he learned that the White House had not released Mr. Nixon's letter to him.

Instead, Richardson said, he incorporated the release into a letter he wrote Mr. Nixon the next day stating

that the price of Cox's access to the subpoenaed tapes through the "Stennis compromise" should not be "the renunciation of any further attempt by him to resort to judicial process."

The press release that until now was unpublished says:

"The President's decision to call on Sen. Stennis to prepare an authenticated record constitutes, in my view, a reasonable and constructive compromise of the 'Watergate tapes' issue.

"It seems to me inconsistent, however, with the explicit understandings on which I was confirmed and the office of special prosecutor was created for me to deal now with hypothetical future attempts by Mr. Cox to invoke judicial process, and the proposal I presented to Mr. Cox this week would not have attempted to do so.

"I plan to seek an early opportunity to discuss this approach with the President."

On Nov. 13 The Washington Post reported that seven other documents appeared to support Richardson's version of the events leading to Cox's firing despite the reports of the private remarks of Mr. Nixon and Haig.

Richardson was asked yesterday how he feels about those reports, which included a remark allegedly made by Haig referring to Richardson's taking a drink and an article Nov. 20 in the Knight newspapers that "some top administration officials are quietly indicating" Richardson had a "drinking problem."

"Well, I was at first incredulous," he said, "and then increasingly disturbed. I came to wonder whether this was a systematic effort to discredit me." He said the Knight story "made me very angry and disgusted. I have no reason to doubt the White House denial that they ever said anything like this.

"And I must say everyone in the White House from the President on down that I've ever dealt with is so completely aware that nothing like this has any truth whatever that I would find it hard to believe they could have said anything like it."

The Knight story quoted an unnamed "agency head" but not anyone in the White House itself.

Haig also said he was sick over the Knight story," Richardson reported.

Asked if he still wonders about any "systematic" White House effort to discredit him, he replied, "I certainly have a question."

As Richardson reconstructed the events leading to Cox's firing, there was discussion of dismissing him Monday, Oct. 15, in a meeting he had with Haig and Buzhardt. "I said I couldn't go along with it and would have to resign," Richardson said.

On Wednesday, Oct. 17, Cox received the Stennis proposal. The next afternoon Richardson met with Haig, Buzhardt, and White House lawyers Leonard Garment and Charles Alan Wright. They had heard from Cox and "construed Cox's remarks as tantamount to rejection."

Wright, who had learned of the Stennis proposal for the first time, thought it was "a major concession," Richardson recalled. "So I said, 'Why don't you try to sell it, Charlie? Maybe you can do it better than I can.'"

Wright phoned Cox, and Cox told Richardson the next day he interpreted the call as an effort "to elicit rejection," Richardson continued.

On Thursday evening after the White House meeting, Richardson said he understood that the plan would "result in Cox's firing unless he accepted the Stennis proposal" and began writing a "summary of reasons why I must resign."

On Friday morning, Oct. 19, Richardson learned for the first time that the future court restriction on Cox had been linked to the Stennis proposal, and he said, that night he learned of Mr. Nixon's order to him to impose that restriction on Cox.

In the intervening hours, he said, he asked Haig to try to convince the President the link should not be made. "Haig said he had tried, but the President wouldn't go along," Richardson said, adding that he considered Haig's role as one of a conduit only, not as an advocate of the Richardson position.

59. On October 18, 1973 Cox submitted to Richardson his comments on Richardson's proposed compromise, noting certain objections on particular points. Cox stated that the essential idea of providing for impartial but non-judicial means for providing the Special Prosecutor with an accurate version of the content of the tapes without his participation was not unacceptable. Richardson met with Haig and Wright at the White House and discussed Cox's comments. On the evening of October 18, Wright told Cox that four of his comments departed so far from Richardson's proposal that the White House could not accede to them in any form and that if Cox did not agree the White House would follow the course it deemed in the best interest of the country.

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Having by this process converted the preliminary record into his own verified record, the verifier would attach to it a certificate attesting to its completeness and accuracy and to his faithful observance of the procedure set forth above.

Court approval

Court approval of the proposed procedure would be sought at two stages: (a) in general terms when or soon after the verifier began his task, but *without identifying him by name*, and (b) when the verified record was delivered to the Court with the verifier's certificate. At the second stage, the Special Prosecutor and counsel for the President would join in urging the Court to accept the verified record as a full and accurate record of all pertinent portions of the tapes for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access.

Assurance against tampering

Submission of the verified record to the Court would be accompanied by such affidavits with respect to the care and custody of the tapes as would help to establish that the tapes listened to by the verifier had not at any time been altered or abbreviated.

COMMENTS ON ATTORNEY GENERAL'S PROPOSAL BY ARCHIBALD COX, OCTOBER 18, 1973

COMMENTS ON "A PROPOSAL"

The essential idea for establishing impartial but non-judicial means for providing the Special Prosecutor and grand jury with an accurate record of the content of the tapes without his participation is not unacceptable. A courtroom "victory" has no value *per se*. There should be no avoidable confrontation with the President, and I have not the slightest desire to embarrass him. Consequently, I am glad to sit down with anyone in order to work out a solution along this line if we can.

I set forth below brief notes on a number of points that strike me as highly important.

1. The public cannot be fairly asked to confide so difficult and responsible a task to any one man operating in secrecy, consulting only with the White House. Nor should we be put in the position of accepting any choice made unilaterally.

2. Your idea of tying a solution into court machinery is a good one. I would carry it farther so that any persons entrusted with this responsibility were named "Special Masters" at the beginning. This would involve publicity but I do not see how the necessary public confidence can be achieved without open announcement of any agreement and of the names of the Special Masters.

3. The stated objective of the proposal is too narrow. It should include providing evidence that in any way relates to other possible criminal activity under the jurisdiction of this office.

4. I do not understand the implications of saying that the "verbatim transcript . . . would be in the third person." I do assume that the names of all speakers, of all persons addressed by name or tone, and of all persons mentioned would be included.

5. The three standards for omission probably have acceptable objectives, but they must be defined more narrowly and with greater particularity.

6. A "transcript" prepared in the manner projected might be enough for investigation by the Special Prosecutor and grand jury. If we accept such a "transcript" we would try to get it accepted by the courts (as you suggest). There must also be assurance, however, that if indictments are returned, if evidence concerning any of the nine conversations would, in our judgment, be important at the trial, and if the court will not accept our "transcript" then the evidence will be furnished to the prosecution in whatever form the trial court rules is necessary for admissibility (including as much of the original tape as the court requires). Similarly, if the court rules that a tape or any portion must be furnished a defendant or the case will be dismissed, then the tape must be supplied.

7. I am glad to see some provision for verifying the integrity of the tapes even though I reject all suggestions of tampering. Should we not go further to dispel cynicism and make provision for skilled electronic assistance in verifying the integrity of the tapes and to render intelligible, if at all possible, portions that appear inaudible or garbled?

8. We ought to have a chance to brief the Special Masters on our investigations, etc., so as to give them an adequate background. The Special Masters should be

encouraged to ask the Prosecutor for any relevant information. What about a request for reconsideration in the case of an evident mistake?

9. The narrow scope of the proposal is a grave defect, because it would not serve the function of a court decision in establishing the Special Prosecutor's entitlement to other evidence. We have long pending requests for many specific documents. The proposal also leaves half a law-suit hanging (i.e., the subpoenaed papers). Some method of resolving these problems is required.

10. I am puzzled about the practical and political links between (a) our agreeing upon a proposal and (b) the demands of the Ervin Committee.

11. The Watergate Special Prosecution Force was established because of a widely felt need to create an independent office that would objectively and forthrightly pursue the prima facie showing of criminality by high Government officials. You appointed me, and I pledged that I would not be turned aside. Any solution I can accept must be such as to command conviction that I am adhering to that pledge.

LETTER FROM CHARLES ALAN WRIGHT, OCTOBER 18, 1973

THE WHITE HOUSE,
Washington, D.C., October 18, 1973.

Hon. ARCHIBALD COX,
Watergate Special Prosecution Task Force,

DEAR MR. COX: This will confirm our telephone conversation of a few minutes ago.

The fundamental purpose of the very reasonable proposal that the Attorney General put to you, at the instance of the President, was to provide a mechanism by which the President could voluntarily make available to you, in a form the integrity of which could not be challenged, the information that you have represented you needed to proceed with the grand jury in connection with nine specified meetings and telephone calls. This would have also put to rest any possible thought that the President might himself have been involved in the Watergate break-in or cover-up. The President was willing to permit this unprecedented intrusion into the confidentiality of his office in order that the country might be spared the anguish of further months of litigation and indecision about private Presidential papers and meetings.

We continue to believe that the proposal as put to you by the Attorney General is a reasonable one and that its acceptance in full would serve the national interest. Some of your comments go to matters of detail that we could talk about, but your comments 1, 2, 6 and 9, in particular, depart so far from that proposal and the purpose for which it was made that we could not accede to them in any form.

If you think that there is any purpose in our talking further, my associates and I stand ready to do so. If not, we will have to follow the course of action that we think in the best interest of the country. I will call you at 10:00 a.m. to ascertain your views.

Sincerely,

CHARLES ALAN WRIGHT.

LETTER TO CHARLES ALAN WRIGHT, OCTOBER 19, 1973

WATERGATE SPECIAL PROSECUTION FORCE,
UNITED STATES DEPARTMENT OF JUSTICE,
Washington, D.C., October 19, 1973.

CHARLES ALAN WRIGHT, Esquire,
The White House, Washington, D.C.

DEAR CHARLIE: Thank you for your letter confirming our telephone conversation last evening.

Your second paragraph referring to my comments 1, 2, 6, and 9 requires a little fleshing out although the meaning is clear in the light of our telephone conversation. You stated that there was no use in continuing conversations in an effort to reach a reasonable out-of-court accommodation unless I would agree categorically to four points.

Point one was that the tapes must be submitted to only one man operating in secrecy, and the President has already selected the only person in the country who would be acceptable to him.

Point two was that the person named to provide an edited transcript of the tapes could not be named Special Master under a court order.

I did have some discussions over, I guess, 3 days—I won't vouch for that, but I think it was 3 days—with counsel to the President. Senator, we agreed that the substance of those discussions would be confidential, because if one begins with that kind of understanding in negotiating, it increases the chances of reaching an agreement, and I would prefer not to be asked to go into details concerning it. If counsel for the President should say that he would release me from my pledge, I would certainly have no objection to testifying here—except I would like to stay on the coast of Maine—but I have no objection to testifying here on that subject.

Then there came the time right after the decision in the court of appeals in which there were discussions with no such pledge of confidentiality on either side.

I don't know how much of your time you want to take to go into this.

The CHAIRMAN. Senator Tunney's time is up when you get through answering that question.

Have you finished answering the question?

Mr. Cox. I conducted discussions with Attorney General Richardson. My recollection would be that they began not with Monday, but back the previous Friday and Saturday. I do know that I was with him the previous Friday before the court decision came down. And I have a recollection that we began exploring ideas about the tapes. We talked on Monday, and we talked on Tuesday. And I gave him, I think it was Tuesday, after being assured that it would be all right, a written proposal that I had made earlier to the White House counsel that I am not at liberty to disclose. He said: Well, I will try to put my ideas in writing. And on Wednesday afternoon, late Wednesday afternoon, he gave me the proposal that is in front of the committee.

I considered it and said: I think that I should respond to you in writing, because it would be more careful that way. And sometime Thursday afternoon I sent over to him the paper called "Comments on the proposal."

I think you will judge from reading it that my effort was to keep the discussion going, and to keep working on it, because I thought if we could find something that would satisfy the need when conducting an investigation and prosecution and which at the same time enabled the President to preserve some of his position and not submit to the court decree that he would like to resist, that that would be thoroughly desirable and would avoid a later risk of constitutional confrontation.

That evening Mr. Wright came on the phone. And it was apparent to me from his tone that demands were made on me which he knew I couldn't accept. And I still said: Well, I don't think we ought to do this just like this over the phone, it is too important, that we ought to stick with it, at least let me think about it overnight. And I sent back to him the next morning a statement of what I understood him to say, and my reaction to it.

At that time, indeed, just before I sent the letter, I had one from him saying that unless I agreed to certain things, the President would take such action as he judged to be in the national interest, which I took to mean that it wouldn't be long before I could go to the coast of Maine.

My wish clearly was that the Attorney General and I could have continued to wrestle with this after a petition for certiorari was filed,

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5:00 AG Conf. Room: Staff Meeting (ELR did not attend).
8:00 1100 Crest Lane: informal dinner for WDR.

THURSDAY, OCTOBER 18, 1973

9:00 AG: P.A. Meeting.
10:00 AG: Budget Appeals Meeting—Norman Carlson and staff (Prisons).
11:15 AG: Budget Appeals Meeting (CRS) Don Jones and staff.
11:40-12:40 AG Conf. Room: Backgrounder for Newsmen re DOJ Management Study.
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3:00 White House Cabinet Room: Cabinet Meeting.
6:00 White House: General Haig.

FRIDAY, OCTOBER 19, 1973

8:00 AG: JM, JTS, RGD.
10:00 White House: General Haig.
1:00 AG Dining rm.: JTS, RGD, JM and joined by WDR.
5:00 AG: WDR, JM, JTS, RGD.
7:00 10:45 AG: H. Webb joined group.

SATURDAY, OCTOBER 20, 1973

10:00 a.m.: arrived AG's office.
11:00: WDR, JM, JTS, RGD.
1:30: lunch served in AG's office.
2:00: Prof. Bork and Hushen joined group.
3:30: to White House to see General Haig, Buzhardt, Garment? and others?
4:00(?): saw President.
5:15 (approx.): returned to office.
7:20 (approx.): sent John Scott to White House to deliver ELR and WDR's resignation.
8:45 p.m.: (approx.) left office for home.
9:35 p.m.: FBI arrived to seal off AG's suite.

TAB B

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General Haig—from 12:10.
General Haig—from 1:15.
General Haig—to 2:55 (unable to take call); returned call 3:20.
General Haig—from 4:05.

TUESDAY, OCTOBER 16, 1973

General Haig—from 9:15.
J. Fred Buzhardt—to 9:40.
General Haig—to 10:05 (unable to take call).
Congressman Rodino—from 5:20 (ELR not back in office from NYC).
General Haig—returned a.m. call 5:40 (ELR not back in office yet).
Archibald Cox—to 5:50.
General Haig—to 7:00.
General Haig—to 7:10.

WEDNESDAY, OCTOBER 17, 1973

Archibald Cox—to 9:25.
J. Fred Buzhardt—to 11:35.
J. Fred Buzhardt—from 3:10.
Chairman Robert Hampton—from (time not noted).
Archibald Cox—to 6:20.
General Haig—to 7:00 (unable to take call); returned call 7:12.

Indistinct document retyped by
House Judiciary Committee staff

confidentially, and wishing to avoid continuing litigation, he made it a condition of the offer to provide a verified record of the subpoenaed tapes that access to any other tapes or records would be barred.

I regarded the proposal to rely on Senator Stennis for a verified record -- for the sake of bravety I will call it the Stennis Proposal -- as reasonable, but I did not think it should be tied to the foreclosure of the right of the Special Prosecutor to invoke judicial process in future situations.

Accordingly, I outlined the Stennis Proposal to Mr. Cox later on Monday afternoon, and proposed that the question of other tapes and documents be deferred.

Mr. Cox and I discussed the Stennis Proposal again on Tuesday morning.

On Wednesday afternoon, responding to Mr. Cox's suggestion that he could deal more concretely with the proposal if he had it on paper, I sent him the document captioned "A Proposal" which he released at his Saturday press conference.

On the afternoon of the next day, he sent me his comments on the proposal, including the requirement that he have assured access to other tapes and documents. The President's lawyers regarded Mr. Cox's comments as amounting to a rejection of the Stennis Proposal, and there followed the breakoff of negotiations reflected in the correspondence with Charles Alan Wright, released by Mr. Cox.

Indistinct document retyped by
House Judiciary Committee staff

Mr. RICHARDSON. It didn't quite come that way. I indicated that I certainly would resign if the idea that was broached on Monday, that I have just referred to, was carried out. You have now a copy of the notes I made overnight, Thursday night, with the idea that I would resign Friday morning. But at that point the issue was over going forward with the Stennis proposal and firing Mr. Cox, period. So I was prepared to resign on that account. The issue got narrowed down between Friday morning and Saturday afternoon to the residual issue of access to the documents. And so I had—my position on Friday afternoon was that the President should go forward with the Stennis proposal, that his lawyers should try to sell it to the district court, and that any questions dealing with other papers, documents, and so on, ought to be deferred until and unless they arose in the course of some other judicial proceeding. And I put that into a letter to the President on Saturday morning. It turned out—I had urged this approach on Friday. I was told Friday, late in the afternoon, that the President wouldn't buy it, that I was going to get the letter that he then sent me. I restated my position and then sent my letter on Saturday morning, but by then it was—his position was fixed.

Senator TUNNEY. But on Monday you had indicated that you would resign if there was an attempt made to fire Mr. Cox as a means of ending the question about access to Presidential papers?

Mr. RICHARDSON. Yes.

Senator TUNNEY. General Haig has said that as late as the day before Cox's dismissal, the outcome was not preplanned, not desired, indeed, I think, not very well visualized by all participants. Apparently, however, from your testimony here today, you had made it very clear that if pushed to the brink, you would resign, and the brink being the firing of Mr. Cox?

Mr. RICHARDSON. Yes. But I think that what General Haig was saying is that the President and the President's staff thought that they had come up with a way of dealing with this that would not entail firing Mr. Cox. What they left out of account was that Mr. Cox would refuse to carry out the direction not to pursue legal process and thus in effect create a confrontation which would lead to his firing anyway. When they refer to miscalculation, that was it. My position at that point was, as I said, that there was no need to provoke that confrontation, that they could and should have gone forward simply with the Stennis proposal itself as a way of handling the subpoena of the tapes.

Senator TUNNEY. I recall Mr. Cox's testimony before the committee, and my memory can be refreshed on this, he said when Mr. Wright approached him with the proposal of allowing Senator Stennis to listen to the tapes, and then not go ahead with further subpoenas for additional Presidential papers, Mr. Wright said, "I know that you are not going to accept this," or words to that effect.

Mr. RICHARDSON. Yes.

Senator TUNNEY. Apparently, it was fairly clear, at least to Mr. Wright, that Mr. Cox was being pushed to the brink and that these negotiations in fact were no longer negotiations, but an ultimatum?

Mr. RICHARDSON. Yes.

Mr. Cox's understanding of what was said to him by Mr. Wright was substantially at variance with what I thought Mr. Wright was

going to say to Mr. Cox. In fact, I had been—I had urged that Mr. Wright make a call to Mr. Cox because Mr. Wright was very persuasive on the proposition that the Stennis proposal was a good proposition as far as it went. And so I said, “well, why don’t you take a crack at convincing him?” And it was agreed that he would do that.

I was surprised, as I said earlier, when I saw Mr. Cox’s letter the next day incorporating reference to these other positions, and I said this is making the President’s proposal look less reasonable than it is. We ought to write him another letter saying those are not conditions of the Stennis proposal, and everybody said that was a good idea, but the letter never got written, at least not in the form I thought it was going to be written.

Senator TUNNEY. And so the result was the ultimatum?

Mr. RICHARDSON. Yes.

Senator TUNNEY. Do you feel that this ultimatum represented in any way an illegal effort to influence or intimidate an officer of the court in the discharge of his duties, by threatening letter or communication to influence or obstruct the administration of justice?

Mr. RICHARDSON. No.

Well, I suppose I shouldn’t be dogmatic about it. But I think the answer to that is no. Mr. Cox was an officer of the executive branch and while I think it would be fair to characterize the terms of his charter as constituting a contract in effect certainly with this committee, if not the Senate as a whole, nevertheless the abrogation of its terms did not involve a violation of law. The President, it is fair to say, in my view felt very strongly about the issue of confidentiality of Presidential documents. I have not seen anything to suggest that the—let’s say, all the facts I know are fully consistent with the hypothesis that he was only trying to protect that principle. They are not—I know of nothing that requires the conclusion that he was trying to cover up evidence that would have been incriminating to him. He has told me and he has told other people, and most recently, Senator Saxbe told me, the President said to him that what he said about the tapes publicly is a fair characterization of them. Mr. Buzhardt cross-examined the President, he has told me, at length when he was first asked to come over to the White House as Presidential counsel. And so I think that there was a feeling on the President’s part that here was a guy who was motivated by partisan considerations, who was out to destroy his Presidency, who was stretching his jurisdiction in order to thrash around among Presidential papers to see what he could get, and that this was in violation of important considerations protecting the confidentiality of Presidential communications, and that was it. And I think it came to the stretching point when he felt that he had made a major concession which Mr. Cox found unacceptable, and so there it broke. I think that is a fair characterization of what happened as I perceived it.

Senator TUNNEY. The reason I ask the question is that title 18, Criminal Procedures, section 1503, influencing or injuring officer juror, or witness, says:

§ 1503. Influencing or injuring officer, juror or witness generally.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States magistrate or other committing magistrate, or any grand or petit juror, or officer in or of any court of the

THE WHITE HOUSE

WASHINGTON

October 18, 1973

Dear Mr. Cox:

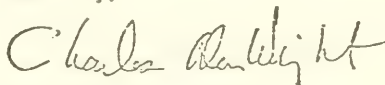
This will confirm our telephone conversation of a few minutes ago.

The fundamental purpose of the very reasonable proposal that the Attorney General put to you, at the instance of the President, was to provide a mechanism by which the President could voluntarily make available to you, in a form the integrity of which could not be challenged, the information that you have represented you needed to proceed with the grand jury in connection with nine specified meetings and telephone calls. This would have also put to rest any possible thought that the President might himself have been involved in the Watergate break-in or cover-up. The President was willing to permit this unprecedented intrusion into the confidentiality of his office in order that the country might be spared the anguish of further months of litigation and indecision about private Presidential papers and meetings.

We continue to believe that the proposal as put to you by the Attorney General is a reasonable one and that its acceptance in full would serve the national interest. Some of your comments go to matters of detail that we could talk about, but your comments 1, 2, 6 and 9, in particular, depart so far from that proposal and the purpose for which it was made that we could not accede to them in any form.

If you think that there is any purpose in our talking further, my associates and I stand ready to do so. If not, we will have to follow the course of action that we think in the best interest of the country. I will call you at 10:00 a.m. to ascertain your views.

Sincerely,



Charles Alan Wright

The Honorable Archibald Cox
Watergate Special Prosecution Task Force

001048



60. On the night of October 18, 1973 Richardson prepared a summary of reasons why he thought he must resign. Richardson wrote that Cox had rejected a proposal which Richardson considered reasonable, but since he appointed Cox on the understanding that he would fire him only for "extraordinary improprieties," and since he could not find Cox guilty of any such improprieties, Richardson could not stay if Cox went.

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60.2 Elliot Richardson, Summary of Reasons Why I Must Resign, October 19, 1973, SJC, 1 Special Prosecutor Hearings 280.....	785

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Mr. RICHARDSON. Yes. But I think that what General Haig was saying is that the President and the President's staff thought that they had come up with a way of dealing with this that would not entail firing Mr. Cox. What they left out of account was that Mr. Cox would refuse to carry out the direction not to pursue legal process and thus in effect create a confrontation which would lead to his firing anyway. When they refer to miscalculation, that was it. My position at that point was, as I said, that there was no need to provoke that confrontation, that they could and should have gone forward simply with the Stennis proposal itself as a way of handling the subpoena of the tapes.

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Mr. RICHARDSON. Yes.

Senator TUNNEY. Apparently, it was fairly clear, at least to Mr. Wright, that Mr. Cox was being pushed to the brink and that these negotiations in fact were no longer negotiations, but an ultimatum?

Mr. RICHARDSON. Yes.

Mr. Cox's understanding of what was said to him by Mr. Wright was substantially at variance with what I thought Mr. Wright was

TAB C

SUMMARY OF REASONS WHY I MUST RESIGN—ELR Oct. 19, 1973

1. It was a condition of my confirmation that I appoint a Special Prosecutor, and I reserved the right to fire him only in the case of some egregiously unreasonable action.

2. While Cox has rejected a proposal I consider reasonable, his rejection of it cannot be regarded as being as far beyond the pale as would justify my own exercise of my reserved power to fire him. He is, after all, being asked to accept a proposition that would give him significantly less than he has won in 2 court decisions. Besides, I really believe that in all my dealings with him he has been honest and fair.

3. I believe that so far as I personally am concerned, there is need for an independent prosecutor:

(a) because of my part in this Administration from its beginning;

(b) because since Cox's appointment I have been serving as a middleman between Cox and counsel for the President, and this role has impaired the independence I might otherwise have;

(c) I don't think that I could effectively deal with Buzhardt *et al* in Cox's place with the independence that a prosecutor should have;

(d) I am in fact loyal to the President, and I am by temperament a team player, and these were the reasons originally why a Special Prosecutor was perceived to be necessary. I cannot now change spots completely enough to be perceived to be—or feel that I am—as independent as I should be. Indeed, these are the reasons why I announced even before my confirmation hearings began that I would appoint a Special Prosecutor. Nobody forced me into it. I was fully convinced it should be done.

4. The Agnew situation does not prove my independence—on the contrary, many people feel that the President's interests were served by the part I played in bringing about the Vice President's resignation.

5. As for Senate acquiescence—even if obtained—this isn't good enough: they were right the first time—and in any case (as noted above) I announced that I would name a Special Prosecutor before the hearing began and when the President's own possible involvement in Watergate or the coverup was not a dominant consideration in this decision. So far as my own position is concerned, the situation has not significantly changed.

6. I do not believe the President's attitude toward Cox's role is fundamentally valid: many problems and headaches could have been avoided by cooperating with him more and fighting him less. However that may have been, this feeling on my part makes it all the harder for me to justify his firing.

7. In short: since I appointed Cox on the understanding that I would fire him only for "extraordinary improprieties" on his part, and since I cannot find him guilty of any such improprieties, I cannot stay if he goes.

TAB D

A PROPOSAL—ELR OCTOBER 17, 1973

THE OBJECTIVE

The objective of this proposal is to provide a means of furnishing to the Court and the Grand Jury a complete and accurate record of the content of the tapes subpoenaed by the Special Prosecutor insofar as the conversations recorded in those tapes in any way relate to the Watergate break-in and the coverup of the break-in, to knowledge thereof on the part of anyone, and to perjury or the subornation of perjury with regard thereto.

THE MEANS

The President would select an individual (the verifier) whose wide experience, strong character, and established reputation for veracity would provide a firm basis for the confidence that he would put above any other consideration his responsibility for the completeness and accuracy of the record.

61. On October 19, 1973 Richardson met at the White House with Haig, Garment, Buzhardt and Wright. Richardson was shown a letter from Cox stating Cox's objection to a requirement that he could not subpoena other White House papers and tapes. Richardson has testified that he was surprised that Cox thought there was such a requirement and he suggested that another letter be sent to Cox making it clear that those were not the conditions of the proposal. On October 19, Wright wrote Cox clarifying two points in their prior correspondence and stating that further discussion seeking to resolve the matter by compromise would be futile.

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FRIDAY, OCTOBER 19, 1973

8:00 AG: JM, JTS, RGD.
10:00 White House: General Haig.
1:00 AG Dining rm.: JTS, RGD, JM and joined by WDR.
5:00 AG: WDR, JM, JTS, RGD.
7:00 10:45 AG: H. Webb joined group.

SATURDAY, OCTOBER 20, 1973

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11:00: WDR, JM, JTS, RGD.
1:30: lunch served in AG's office.
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WEDNESDAY, OCTOBER 17, 1973

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Archibald Cox—to 6:20.
General Haig—to 7:00 (unable to take call); returned call 7:12.

eign affairs and national security agencies. Rather, it involves the preservation of the basic ability of the executive branch to continue to function and perform the responsibilities assigned to it by the Constitution. Unless privacy in the preliminary exchange of views between personnel of the Executive agencies can be maintained, the healthy expression of opinion and the frank, forthright interplay of ideas that are essential to sound policy and effective administration cannot survive.

RICHARD NIXON

The White House,
October 23, 1973.

Presidential Tapes

*News Conference of Alexander M. Haig, Jr.,
Assistant to the President, and Charles Alan Wright,
Consultant to the Counsel to the President, on the
President's Decision To Comply With Court
Order Requiring Production of the Tapes.
October 23, 1973*

MR. ZIEGLER. Ladies and gentlemen, in light of today's events, I thought it would be worthwhile to have Professor Charles Wright, who has been consulting with the White House Counsel's office, to come before you today to make some remarks and take some of your questions, and also the Assistant to the President, Al Haig, who has participated in the events of the past week, together with other members of the White House staff.

But first, before we go to their remarks and give them an opportunity to answer some of your questions, I would like to announce that tomorrow night at 9 p.m., eastern time, President Nixon will address the Nation on the recent events, including today's decision. The President's address will be carried on live television and radio.¹

I think we will begin with General Haig, who can outline for you, first of all, some of the events of the past week that led to this decision, and then Professor Wright can discuss some of the matters relating to the court procedures, and then we can go to questions for a while. General Haig.

GENERAL HAIG. Ladies and gentlemen, what I thought I would try to do this afternoon is try to put some perspective on what one journalist has referred to as the firestorm, and try, to the degree I can, to present to you and the American people some of the considerations that led up to the events of this past weekend and culminated in today's Presidential decision, and in doing that I think it is quite important that we go back in time a bit to a period of the weekend before last.

¹On Wednesday, October 24, the White House announced that, because of his concentration on developments in the Middle East, the President would not address the Nation that evening but would later hold a televised news conference. For the President's news conference of October 26, see page 1287 of this issue.

And it was at this juncture that the President, after very careful consideration and full consultation with his advisers, especially those on his legal staff, determined that he would make a herculean effort to resolve what had become a highly profiled and extremely controversial issue; that is, the issue surrounding the data and the information contained on the Presidential tapes of conversations which took place with various individuals in the President's office here in the White House and in the Executive Office Building.

Now, there were two factors that led the President to conclude that the time had come to resolve this very, very controversial issue. One of them involved the domestic scene itself, and the storm of controversy that raged around this issue.

I don't think it requires a blueprint for this group here to emphasize that the issue itself had progressively begun to polarize our body politic. Lines were clearly being drawn both within the Congress, within the media, and I think to a large extent within the viewpoint of the American people themselves.

There were such tales being bandied about that the recent nomination of a new Vice President would be held in hostage to a Supreme Court decision on the tapes issue, and the President to defy the court, then we would move with an impeachment against the President, and with no Vice President there would be a turnover of the Government to a party which did not win November's election.

Now these kinds of considerations, and the realization on our part here that the period of time between the decision of the appellate court and the adjudication of this issue by the Supreme Court would result in even more intense political line-drawing, more intense disunity, and more intense doubt and conflict here at home, and that was certainly a major consideration in the President's determination to try to find a solution in the interest of the overall good of the American people.

Now, there were also international implications of some gravity which led to this Presidential decision. I want to say this very carefully and very precisely, but certainly, certainly any foreign leader, whether he be friend or potential foe, must in a period of turmoil here at home make his calculations about the unity, the permanency, the strength and resilience of this Government in a way that had to take consideration of this tape issue into mind.

Now, what I am not saying, gentlemen and ladies, is that the tape issue brought about international crisis of any kind or was, perhaps, the cause for the Middle East tension which was resolved so happily in recent hours. But what I am saying is that any foreign leader who assesses this Government and its relationships with this Government, whether it be in negotiations or long-term assessments, has got to perceive that the degree of unity and effectiveness of this Government is a key factor in those calculations, and indeed it is; it always is.

So for these two fundamental reasons, and no others—no others—the President decided that he would make this effort last weekend. So on Monday we discussed, as the former Attorney General stated in his press conference today, a number of options, all designed to prevent a constitutional confrontation some 3 to 4 months down the road, with all of the debilitating bleeding and controversy that would have accompanied it in the interim.

This is precisely what resulted in the proposal that was presented on Friday night to the American people. It was at that time, on Monday, that the President decided that he would turn over the controversial tapes to an individual of his selection who was peculiarly qualified to perform this task and to permit him to listen to each and every syllable contained in those tapes as repeatedly and as long as that individual felt it was necessary to ascertain that a third-person transcript which would be prepared and in his hands was a precise, thorough, and accurate reflection of the contents of those tapes.

Now, that proposal was discussed with the former Attorney General in detail and met his criteria for a very reasonable solution to the dilemma.

On Monday afternoon we obtained the agreement in principle of Senator Stennis to take on the task of authenticator, if you will. Now, why Senator Stennis? There are really four fundamental reasons that he was selected by the President for this task.

First, no individual within or without the Government of the United States is more highly qualified than Senator Stennis to assess the national security implications of the contents of these tapes.

Secondly, Senator Stennis—and I am not setting these priorities in order of their merit—is an individual of impeccable reputation for objectivity, honesty, and integrity.

Third, Senator Stennis is a former judge, is highly qualified in law.

And finally, those with partisan views would certainly welcome the selection of a Democrat, albeit a southern one.

For all these reasons, the President felt that Senator Stennis was highly qualified, and, indeed, we were very grateful that the Senator, despite his recent physical problems, patriotically and selflessly agreed to take on this very difficult and tedious task.

Now, having gotten Senator Stennis' agreement, the Attorney General expressed a desire—we having attempted to negotiate a settlement with Professor Cox prior to the appellate court decision, through our White House counsel—the former Attorney General expressed a desire to take up the task of attempting to acquire Professor Cox's acquiescence in this compromise proposal.

He spent the period from Monday evening until Thursday evening at this task, but it became quite apparent to all of us involved by Thursday evening, upon the receipt of a written counter-proposal from Professor Cox, that

this compromise did not meet the criteria he had set for himself.

I say this both in the context of the selection of Senator Stennis as the sole individual to authenticate, a number of other technical concerns that Professor Cox expressed in his written document, counter-proposal, and thirdly, the issue mentioned by the former Attorney General this morning in his press conference, and that being the issue of Professor Cox's strong desire to have the ability at some future date, as a result of his ongoing investigation, to pursue through juridical channels access to additional tapes and personal memoranda covering private conversations of the President.

Now, having viewed Professor Cox's request as one that did not represent the kind of cooperative effort we hoped to receive from him, and having made one more formal try on Friday morning through an exchange of memoranda between Professor Wright and Professor Cox, we then met—that is, the President's counsel, Mr. Garment, Mr. Buzhardt, and Professor Wright, myself—with the Attorney General, and we concluded at that meeting that with or without Professor Cox, we should attempt to resolve this dreadfully controversial issue by proceeding with the proposal providing Senator Ervin and Senator Baker would agree. The results would be the turnover of the product of this effort to both the courts and to the Senate committee in the persons of Senators Ervin and Baker.

Having determined this, and it was the assessment of all of those involved here in the White House that general agreement had been arrived at Friday morning, we set in train the chain of events which brought us to Saturday evening's firestorm, and that is, we requested that both Senators proceed from out of town Friday afternoon to a meeting with the President where the compromise was discussed in detail and where both Senators, I think in a most selfless, patient, and patriotic way, agreed to try to make this thing work.

And so, on Friday evening, this announcement was made concurrently and with the President's viewpoint that he was indeed departing in a fundamental way from a very strongly held conviction that he, as the President of the United States, has the obligation, responsibility to preserve the balance of power between the three coequal branches of Government as it pertains to a protection of confidentiality of Presidential discussions. With that full realization that this was a single exception that he would make in the national interest, he instructed the Attorney General to inform Professor Cox that we were going to proceed, but that henceforth Professor Cox would refrain from requesting, through juridical channels, additional—additional—personal Presidential tapes and memoranda covering private discussions of the President himself.

Now, there was your substantive dilemma, gentlemen. Having received this instruction, and, in fact, somewhat

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

October 19, 1973

Charles Alan Wright, Esquire
The White House
Washington, D.C.

Dear Charlie:

Thank you for your letter confirming our telephone conversation last evening.

Your second paragraph referring to my comments 1, 2, 6, and 9 requires a little fleshing out although the meaning is clear in the light of our telephone conversation. You stated that there was no use in continuing conversations in an effort to reach a reasonable out-of-court accommodation unless I would agree categorically to four points.

Point one was that the tapes must be submitted to only one man operating in secrecy, and the President has already selected the only person in the country who would be acceptable to him.

Point two was that the person named to provide an edited transcript of the tapes could not be named Special Master under a court order.

Point three was that no portion of the tapes would be provided under any circumstances. This means that even if the edited transcript contained evidence of criminality important in convicting wrong-doers and even if the court were to rule that only the relevant portion of the original tapes would be admitted in evidence, still the portion would be withheld. It is also clear that, under your Point 3, the tapes would be withheld even if it meant dismissal of prosecutions against former Government officials who have betrayed the public trust.

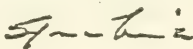
Point four was that I must categorically agree not to subpoena any other White House tape, paper, or document. This would mean that my ability to secure evidence bearing

upon criminal wrongdoing by high White House officials would be left to the discretion of White House counsel. Judging from the difficulties we have had in the past receiving documents, memoranda, and other papers, we would have little hope of getting evidence in the future.

These points should be borne in mind in considering whether the proposal put before me is "very reasonable."

I have a strong desire to avoid any form of confrontation, but I could not conscientiously agree to your stipulations without unfaithfulness to the pledges which I gave the Senate prior to my appointment. It is enough to point out that the fourth stipulation would require me to forego further legal challenge to claims of executive privilege. I categorically assured the Senate Judiciary Committee that I would challenge such claims so far as the law permitted. The Attorney General was confirmed on the strength of that assurance. I cannot break my promise now.

Sincerely,



ARCHIBALD COX
Special Prosecutor

events in that 24 hours which would be helpful to guide us in the next step?

Mr. RICHARDSON. I think the short answer is yes, although the point has been fully developed already before this committee in the hearing of Mr. Cox, and especially in the colloquy between Mr. Cox and Senator Byrd. It focuses on the accessibility by Mr. Cox to Presidential materials other than those that were to be the subject of the so-called Stennis proposal or, more accurately, the right of Mr. Cox to invoke judicial process in order to get at other materials and in other circumstances. It was an attempt to couple the Stennis proposal with the foreclosure of access to any other material that really precipitated the necessity on Mr. Cox's part of saying he could not comply with that directive, and it was on that issue that I was obligated, I felt, to support Mr. Cox and, therefore, resigned rather than be obliged to discharge him.

The lesson of it is simply that we should not go forward into the future investigation and prosecution of these matters without clearing up the issue of access to other Presidential materials as the need may be demonstrated.

Now, we touched this morning on the question of the scope of a waiver in advance of Presidential privilege as applied to these other materials, and I acknowledged that it was important that the Special Prosecutor make some sort of showing of the need. But insofar as he is exercising an executive branch function, as I believe he essentially would be, he ought at least in the first instance to have the opportunity to see anything as to which he can make a reasonable showing is pertinent to his investigations.

I think nothing less than that now would be sufficient, and that is why it seems to me important to have very clearly in view that that was the problem as of October 19 and 20. Indeed, it was a problem that developed during the week because when I was first asked to present the Stennis proposal to Mr. Cox, I was asked to do so on the basis that it was this and no more.

I declined to do that and discussed it with Mr. Cox during the week up to Thursday afternoon on the basis of a proposal limited to the tapes that had been subpoenaed in the Watergate case in the District of Columbia. In fact, I was surprised the following morning to see Mr. Cox's letter to Charles Alan Wright referring to the shutoff of access to other materials as part of the proposition presented to him by Mr. Wright. And I said, but surely that is—that puts the proposition to Mr. Cox on less than a—in a light less favorable to the President than what I submitted to him; should there not be another letter making clear that those are not conditions of this proposal?

I only later learned from Mr. Cox that he put these points in the letter to Mr. Wright because he understood the proposition presented to him by Mr. Wright the night before as including them.

Senator MATHIAS. So in effect there—

The CHAIRMAN. Your time is up, Senator Mathias.

Senator MATHIAS. There were really two—

The CHAIRMAN. Your time is up.

Senator MATHIAS. There were really two proposals before Mr. Cox, then, under those conditions?

Mr. RICHARDSON. Yes; instead of the one that I had submitted to him.

going to say to Mr. Cox. In fact, I had been—I had urged that Mr. Wright make a call to Mr. Cox because Mr. Wright was very persuasive on the proposition that the Stennis proposal was a good proposition as far as it went. And so I said, “well, why don’t you take a crack at convincing him?” And it was agreed that he would do that.

I was surprised, as I said earlier, when I saw Mr. Cox’s letter the next day incorporating reference to these other positions, and I said this is making the President’s proposal look less reasonable than it is. We ought to write him another letter saying those are not conditions of the Stennis proposal, and everybody said that was a good idea, but the letter never got written, at least not in the form I thought it was going to be written.

Senator TUNNEY. And so the result was the ultimatum?

Mr. RICHARDSON. Yes.

Senator TUNNEY. Do you feel that this ultimatum represented in any way an illegal effort to influence or intimidate an officer of the court in the discharge of his duties, by threatening letter or communication to influence or obstruct the administration of justice?

Mr. RICHARDSON. No.

Well, I suppose I shouldn’t be dogmatic about it. But I think the answer to that is no. Mr. Cox was an officer of the executive branch and while I think it would be fair to characterize the terms of his charter as constituting a contract in effect certainly with this committee, if not the Senate as a whole, nevertheless the abrogation of its terms did not involve a violation of law. The President, it is fair to say, in my view felt very strongly about the issue of confidentiality of Presidential documents. I have not seen anything to suggest that the—let’s say, all the facts I know are fully consistent with the hypothesis that he was only trying to protect that principle. They are not—I know of nothing that requires the conclusion that he was trying to cover up evidence that would have been incriminating to him. He has told me and he has told other people, and most recently, Senator Saxbe told me, the President said to him that what he said about the tapes publicly is a fair characterization of them. Mr. Buzhardt cross-examined the President. he has told me, at length when he was first asked to come over to the White House as Presidential counsel. And so I think that there was a feeling on the President’s part that here was a guy who was motivated by partisan considerations, who was out to destroy his Presidency, who was stretching his jurisdiction in order to thrash around among Presidential papers to see what he could get, and that this was in violation of important considerations protecting the confidentiality of Presidential communications, and that was it. And I think it came to the stretching point when he felt that he had made a major concession which Mr. Cox found unacceptable, and so there it broke. I think that is a fair characterization of what happened as I perceived it.

Senator TUNNEY. The reason I ask the question is that title 18, Criminal Procedures, section 1503, influencing or injuring officer juror, or witness, says:

§ 1503. Influencing or injuring officer, juror or witness generally.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States magistrate or other committing magistrate, or any grand or petit juror, or officer in or of any court of the

THE WHITE HOUSE
WASHINGTON

October 19, 1973

Dear Archie:

This is in response to your letter of this date. It is my conclusion from that letter that further discussions between us seeking to resolve this matter by compromise would be futile, and that we will be forced to take the actions that the President deems appropriate in these circumstances. I do wish to clear up two points, however.

On what is referred to in your letter today as point three, that no portion of the tapes would be provided under any circumstances, the proposal of the Attorney General was simply silent. That would have been an issue for future negotiation when and if the occasion arose. Your comments of the 18th, however, would have required an advance commitment from us that we cannot make on an issue that we think would never arise.

In what you list as point four you describe my position as being that you "must categorically agree not to subpoena any other White House tape, paper, or document." When I indicated that the ninth of your comments of the 18th was unacceptable, I had in mind only what I referred to in my letter as "private Presidential papers and meetings," a category that I regard as much, much smaller than the great mass of White House documents with which the President has not personally been involved.

I note these points only in the interest of historical accuracy, in the unhappy event that our correspondence should see the light of day. As I read your comments of the 18th and your letter of the 19th, the differences between us remain so great that no purpose would be

NOTE: Mr. Cox has original; copy went to Central Files.

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served by further discussion of what I continue to think was a "very reasonable" -- indeed an unprecedentedly generous -- proposal that the Attorney General put to you in an effort, in the national interest, to resolve our disputes by mutual agreement at a time when the country would be particularly well served by such agreement.

Sincerely,

A handwritten signature in cursive script that reads "Charlie".

Charles Alan Wright

The Honorable Archibald Cox
Special Prosecutor
Watergate Special Prosecution Force
1425 K Street, N. W.
Washington, D. C. 20005

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62. On October 19, 1973 the President wrote to Richardson instructing him to direct Cox to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations. That evening the President issued a press statement stating that Cox had rejected a proposal for compromise made by Richardson that would have included an understanding that there would be no further attempt by the Special Prosecutor to subpoena still more tapes or other Presidential papers of a similar nature.

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I note these points only in the interest of historical accuracy, in the unhappy event that our correspondence should see the light of day. As I read your comments of the 18th and your letter of the 19th, the differences between us remain so great that no purpose would be served by further discussion of what I continue to think was a "very reasonable"—indeed an unprecedentedly generous—proposal that the Attorney General put to you in an effort, in the national interest, to resolve our disputes by mutual agreement at a time when the country would be particularly well served by such agreement.

Sincerely,

(Signed) Charlie
CHARLES ALAN WRIGHT.

TAB F

THE WHITE HOUSE,
Washington, D.C., October 19, 1973.

The Honorable ELLIOT RICHARDSON,
The Attorney General, Department of Justice, Washington, D.C.

DEAR ELLIOT: You are aware of the actions I am taking today to bring to an end the controversy over the so-called Watergate tapes and that I have reluctantly agreed to a limited breach of Presidential confidentiality in order that our country may be spared the agony of further indecision and litigation about those tapes at a time when we are confronted with other issues of much greater moment to the country and the world.

As a part of these actions, I am instructing you to direct Special Prosecutor Archibald Cox of the Watergate Special Prosecution Force that he is to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I regret the necessity of intruding, to this very limited extent, on the independence that I promised you with regard to Watergate when I announced your appointment. This would not have been necessary if the Special Prosecutor had agreed to the very reasonable proposal you made to him this week.

Sincerely,

RICHARD NIXON.

THE ATTORNEY GENERAL,
Washington, D.C., October 20, 1973.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: Thank you for your letter of October 19, 1973, instructing me to direct Mr. Cox that he is to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations.

As you point out, this instruction does intrude on the independence you promised me with regard to Watergate when you announced my appointment. And, of course, you have every right as President to withdraw or modify any understanding on which I hold office under you. The situation stands on a different footing, however, with respect to the role of the Special Prosecutor. Acting on your instruction that if I should consider it appropriate, I would have the authority to name a special prosecutor, I announced a few days before my confirmation hearing began that I would, if confirmed, "appoint a Special Prosecutor and give him all the independence, authority, and staff support needed to carry out the tasks entrusted to him." I added, "Although he will be in the Department of Justice and report to me—and only to me—he will be aware that his ultimate accountability is to the American people."

At many points throughout the nomination hearings, I reaffirmed my intention to assure the independence of the Special Prosecutor, and in my statement of his duties and responsibilities I specified that he would have "full authority" for "determining whether or not to contest the assertion of 'Executive Privilege' or any other testimonial privilege." And while the Special Prosecutor can be removed from office for "extraordinary improprieties," his charter specifically states that "The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions."

Quite obviously, therefore, the instruction contained in your letter of October 19 gives me serious difficulty. As you know, I regarded as reasonable and constructive the proposal to rely on Senator Stennis to prepare a verified record of the so-called Watergate tapes and I did my best to persuade Mr. Cox of the desirability of this solution of that issue. I did not believe, however, that the price of access to the tapes in this manner should be the renunciation of any further attempt by him to

National Foundation on the Arts and the Humanities Authorization Bill

*Statement by the President Upon Signing S. 795.
October 19, 1973*

I am pleased to sign today S. 795, a measure extending for 3 years the authorization for the National Foundation on the Arts and the Humanities.

Government has a vital role to play in encouraging the arts and humanities in our national life, and this Administration has continually reaffirmed its commitment to the fulfillment of that role through the National Foundation.

The purpose of the Foundation is not to alter the role of private patronage in the arts and humanities, but rather to supplement, stimulate, and extend that role. The Federal Government should do its part in supporting cultural activities—and appropriations for the Foundation have increased almost sixfold since I took office—but this increased emphasis on Federal assistance should be joined by private as well as State and local efforts.

The highest expression of the quality of a nation is found in the development of its arts and refinement of its humanistic concerns. For this development to reach its full potential, it must be the expression of a whole people, and it must be available for the enjoyment of the whole people. That was the lesson of Athens. That was the rationale for the National Foundation on the Arts and the Humanities.

As a result of the increased breadth of artistic and humanistic endeavors made possible through Federal assistance, the benefit of these endeavors has been made available to larger and larger numbers of people throughout the country.

As we approach the bicentennial anniversary, the National Foundation will have an increasingly important role to play in helping to represent to the Nation and the world the richness and diversity of our artistic and cultural heritage. The passage of this bill, with the bipartisan cooperation of the Congress and the executive branch, reemphasizes the faith of our Nation's leadership in the ability of the National Foundation for the Arts and the Humanities to inspire and enhance the fullest expression of that heritage.

NOTE: As enacted, the National Foundation on the Arts and the Humanities Amendments of 1973 (S. 795) is Public Law 93-133, approved October 19, 1973.

Availability of Information From Presidential Tapes

*Statement by Deputy Press Secretary to the President
Gerald L. Warren Announcing Release of Statement
on Procedures. October 19, 1973*

The deadline for responding to the order of the Court of Appeals in the Special Prosecutor's case is midnight tonight. Since Monday, the President, in accordance with the Attorney General and White House counsel, has been searching for a way to avoid a constitutional confrontation. The details of what were worked out are contained in the Presidential statement we are releasing.

Tonight Senator Ervin and Senator Baker met with the President for 40 minutes in the Oval Office and agreed to the procedures by which information related to Watergate and coverup from the requested tapes will be made available to the committee and to Judge Sirica of the U.S. District Court.

Now, for your information, Professor Charles Alan Wright and Alexander M. Haig, Jr., were present in the meeting with the President and Senator Ervin and Senator Baker.

We will hand out the statement now. I believe you will find the statement speaks for itself, and I will be unable to comment on it.

Availability of Information From Presidential Tapes

*Statement by the President Announcing Procedures.
October 19, 1973*

For a number of months, there has been a strain imposed on the American people by the aftermath of Watergate, and the inquiries into and court suits arising out of that incident. Increasing apprehension over the possibility of a constitutional confrontation in the tapes cases has become especially damaging.

Our Government, like our Nation, must remain strong and effective. What matters most, in this critical hour, is our ability to act—and to act in a way that enables us to control events, not to be paralyzed and overwhelmed by them. At home, the Watergate issue has taken on over-

tones of a partisan political contest. Concurrently, there are those in the international community who may be tempted by our Watergate-related difficulties at home to misread America's unity and resolve in meeting the challenges we confront abroad.

I have concluded that it is necessary to take decisive actions that will avoid any possibility of a constitutional crisis and that will lay the groundwork upon which we can assure unity of purpose at home and end the temptation abroad to test our resolve.

It is with this awareness that I have considered the decision of the Court of Appeals for the District of Columbia. I am confident that the dissenting opinions, which are in accord with what until now has always been regarded as the law, would be sustained upon review by the Supreme Court. I have concluded, however, that it is not in the national interest to leave this matter unresolved for the period that might be required for a review by the highest court.

Throughout this week, the Attorney General, Elliot Richardson, at my instance, has been holding discussions with Special Prosecutor Archibald Cox, looking to the possibility of a compromise that would avoid the necessity of Supreme Court review. With the greatest reluctance, I have concluded that in this one instance I must permit a breach in the confidentiality that is so necessary to the conduct of the Presidency. Accordingly, the Attorney General made what he regarded as a reasonable proposal for compromise, and one that goes beyond what any President in history has offered. It was a proposal that would comply with the spirit of the decision of the Court of Appeals. It would have allowed justice to proceed undiverted, while maintaining the principle of an independent executive branch. It would have given the Special Prosecutor the information he claims he needs for use in the grand jury. It would also have resolved any lingering thought that the President himself might have been involved in a Watergate coverup.

The proposal was that, as quickly as the materials could be prepared, there would be submitted to Judge Sirica, through a statement prepared by me personally from the subpoenaed tapes, a full disclosure of everything contained in those tapes that has any bearing on Watergate. The authenticity of this summary would be assured by giving unlimited access to the tapes to a very distinguished man, highly respected by all elements in American life for his integrity, his fairness, and his patriotism, so that that man could satisfy himself that the statement prepared by me did indeed include fairly and accurately anything on the tapes that might be regarded as related to Watergate. In return, so that the constitutional tensions of Watergate would not be continued, it would be understood that there would be no further attempt by the Special Prosecutor to subpoena still more tapes or other Presidential papers of a similar nature.

I am pleased to be able to say that Chairman Sam Ervin and Vice Chairman Howard Baker of the Senate Select Committee have agreed to this procedure and that at their request, and mine, Senator John Stennis has consented to listen to every requested tape and verify that the statement I am preparing is full and accurate. Some may ask why, if I am willing to let Senator Stennis hear the tapes for this purpose, I am not willing merely to submit them to the court for inspection in private. I do so out of no lack of respect for Judge Sirica, in whose discretion and integrity I have the utmost confidence, but because to allow the tapes to be heard by one judge would create a precedent that would be available to 400 district judges. Further, it would create a precedent that Presidents are required to submit to judicial demands that purport to override Presidential determinations on requirements for confidentiality.

To my regret, the Special Prosecutor rejected this proposal. Nevertheless, it is my judgment that in the present circumstances and existing international environment, it is in the overriding national interest that a constitutional confrontation on this issue be avoided. I have, therefore, instructed White House counsel not to seek Supreme Court review from the decision of the Court of Appeals. At the same time, I will voluntarily make available to Judge Sirica—and also to the Senate Select Committee—a statement of the Watergate-related portions of the tapes, prepared and authenticated in the fashion I have described.

I want to repeat that I have taken this step with the greatest reluctance, only to bring the issue of Watergate tapes to an end and to assure our full attention to more pressing business affecting the very security of the nation. Accordingly, though I have not wished to intrude upon the independence of the Special Prosecutor, I have felt it necessary to direct him, as an employee of the executive branch, to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I believe that with the statement that will be provided to the court, any legitimate need of the Special Prosecutor is fully satisfied and that he can proceed to obtain indictments against those who may have committed any crimes. And I believe that by these actions I have taken today America will be spared the anguish of further indecision and litigation about tapes.

Our constitutional history reflects not only the language and inferences of that great document, but also the choices of clash and accommodation made by responsible leaders at critical moments. Under the Constitution it is the duty of the President to see that the laws of the Nation are faithfully executed. My actions today are in accordance with that duty, and in that spirit of accommodation.

63. On October 19, 1973 John Dean pleaded guilty to a one-count information charging conspiracy to obstruct justice. As part of the plea bargain, Dean agreed to cooperate with the Special Prosecutor.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN W. DEAN, III,

Defendant.

Criminal No. 886-73

Violation of 18 U.S.C.
§ 371 (Conspiracy to
Obstruct Justice and
Defraud the United
States of America)

FILED

OCT 19 1973

JAMES F. DAVEY, Clerk

INFORMATION

The United States of America, by its Attorney, the Special Prosecutor, Watergate Special Prosecution Force, charges:

1. At all times material herein, JOHN W. DEAN, III, the DEFENDANT, was Counsel to the President of the United States.

2. At all times material herein, the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation were parts of the Department of Justice, an agency of the United States, and the Central Intelligence Agency was an agency of the United States.

3. On or about June 5, 1972, a Grand Jury of the United States District Court for the District of Columbia was duly empanelled and sworn. Beginning on or about June 23, 1972, and at all times material herein, the said Grand Jury was conducting an investigation in conjunction with the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation to determine whether violations of 18 U.S.C. 371, 2511 and 22 D.C. Code 1801(b), and of other statutes of the United

States and of the District of Columbia, had been committed in the District of Columbia and elsewhere, and to identify the individual or individuals who had committed, caused the commission of, or conspired to commit such violations.

4. On September 15, 1972, in connection with the said investigation, the said Grand Jury returned an indictment in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

5. From on or about June 17, 1972 up to and including March 29, 1973, in the District of Columbia and elsewhere, JOHN W. DEAN, III, the DEFENDANT, unlawfully, willfully and knowingly did combine, conspire, confederate and agree with co-conspirators unnamed herein to commit offenses against the United States, to wit, violations of Title 18, United States Code, Section 1503, and to defraud the United States and Agencies and Departments thereof, to wit, the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI) and the Department of Justice, by interfering with and obstructing their lawful governmental functions by deceit and dishonest means.

6. It was a part of the conspiracy that the co-conspirators and defendant would corruptly influence, obstruct and impede, and corruptly endeavor to influence, obstruct and impede, the due administration of justice in connection with the investigation referred to in paragraph three (3) above and in connection with the

trial of Criminal Case No. 1827-72 in the United States District Court for the District of Columbia by the following means, among others: (a) influencing witnesses to give false, deceptive and misleading statements and testimony concerning matters relevant to the investigation and the trial; (b) concealing and destroying evidence relevant to matters which were the subject of the investigation and the trial; and (c) giving false, deceptive and misleading statements and testimony concerning matters relevant to the investigation and the trial.

7. It was further a part of the conspiracy that the co-conspirators and defendant would covertly raise, acquire, transmit, distribute and pay cash funds for the benefit of the individuals named in the indictment in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia, both prior to and subsequent to the return of the indictment on September 15, 1972, for the purpose of concealing and causing to be concealed the identities of others who were responsible for, participated in, or had knowledge of the activities which were the subject of the investigation and trial, and for the purpose of concealing and causing to be concealed the scope of these and related activities.

8. It was further a part of the conspiracy that the co-conspirators and defendant would make and cause to be made offers of leniency, executive clemency, and

other benefits to certain of the individuals named in the indictment in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia for the purpose of concealing and causing to be concealed the identities of others who were responsible for, participated in, or had knowledge of the activities which were the subject of the investigation and trial, and for the purpose of concealing and causing to be concealed the scope of these and related activities.

9. It was further a part of the conspiracy that the co-conspirators and defendant would interfere with and obstruct the lawful governmental functions of the CIA by attempting, by deceit and dishonest means, to use the CIA to obstruct the investigation referred to in paragraph three (3) above and to provide covert financial assistance to persons who were subjects of the investigation.

10. It was further a part of the conspiracy that the co-conspirators and defendant would interfere with and obstruct the lawful governmental functions of the FBI and the Department of Justice by obtaining and attempting to obtain from the FBI and the Department of Justice, by deceit and dishonest means, information concerning the investigation referred to in paragraph three (3) above for the purpose of hindering, impeding, obstructing and delaying the said investigation.

11. In furtherance of, and in order to effectuate the objects of the conspiracy, the co-conspirators and

defendant did perform and did cause to be performed the following overt acts, among others, in the District of Columbia:

OVERT ACTS

1. On or about June 19, 1972, JOHN W. DEAN, III directed G. Gordon Liddy to tell E. Howard Hunt to leave the United States.

2. On or about June 27, 1972, JOHN W. DEAN, III asked General Vernon A. Walters, Deputy Director of the CIA, whether the CIA could use covert funds to pay the bail and salaries of those involved in the break-in at the Watergate Office Complex.

3. On or about June 29, ^{1972 Doc} ~~1973~~ JOHN W. DEAN, III requested Herbert W. Kalmbach to raise cash funds with which to make covert payments to and for the benefit of those involved in the break-in at the Watergate Office Complex.

4. In or about July and October, 1972, JOHN W. DEAN, III requested L. Patrick Gray, Acting Director of the FBI, to provide him with reports of information obtained during the FBI investigation.

5. On or before August 15, 1972, JOHN W. DEAN, III met with Jeb Stuart Magruder for the purpose of assisting Magruder in preparing false, deceptive and misleading testimony in anticipation of Magruder's appearance before the Grand Jury.

6. On or about January 9, 1973, JOHN W. DEAN,

III requested John C. Caulfield to deliver an offer of executive clemency to James McCord, one of the defendants in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

(In violation of Title 18, United States Code, Section 371.)

Archibald Cox

ARCHIBALD COX
Special Prosecutor
Watergate Special Prosecution Force

OCT 20 1973

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THE NEW YORK TIMES, SA

Dean Pleads Guilty in Deal; Will Aid the Prosecution

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, Oct. 19 — John W. Dean 3d, the former counsel to President Nixon, pleaded guilty today to plotting a long fight for total immunity from prosecution, and he pledged his "complete cooperation" with the Cox prosecution.

Text of Dean's statement appears on Page 20.

to cover up the truth about the Watergate break-in.

He made his plea as part of a bargain with the special Watergate prosecutor Archibald Cox, under which Dean agreed to be a prosecution witness in future proceedings against alleged participants in the cover-up — including, potentially, against President Nixon.

Immunity Fight Ends

Mr. Cox allowed Dean to plead guilty in Federal District Court here to a single felony count of conspiracy to obstruct justice and defraud the United States, punishable by a maximum five-year prison term and a \$10,000 fine, with sentencing deferred until the bargain is kept.

Mr. Cox also promised not to prosecute Dean for any other Watergate-related crime, reserving only the right to prosecute the lawyer for any perjury that may occur in the future.

In return, Dean gave up his

Dean is considered the crucial witness against a number of former high officials in the White House and in the Nixon re-election campaign, including John N. Mitchell, the former Attorney General, and H. R. Haldeman and John D. Ehrlichman, former Presidential aides.

Beyond that, he is the key witness in any potential proceeding against the President.

In his testimony before the Senate Watergate committee last June, Dean swore that Mr. Nixon had participated in the cover-up of the break-in at the Democratic national headquar-

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Dean Pleads Guilty to Single Charge

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ters on June 17, 1972.

Dean told the committee that the president had said that \$1-million would not be too much to pay for those arrested for the break-in to keep them silent. The President, Dean went on, knew also that executive clemency had been promised in return for silence. Dean said that Mr. Nixon had congratulated him on the "good job" he had done in limiting the authorities' investigation of the break-in.

This testimony has been denied and the prosecutor's search for confirmation has led to the confrontation between the President and the prosecutor over the White House tape recordings of conversations between the President and other persons.

It is not entirely clear that Dean will be permitted to be a witness if those tapes are not turned over. A Federal judge in New York hinted yesterday that without the tapes, he might bar Dean as a witness in the obstruction of justice trial of Mr. Mitchell and Maurice H. Stans. Mr. Cox declined comment on the issue today, saying he wanted to see precisely what the judge had said.

The contours of the Cox-Dean bargain began to unfold this morning in the courtroom of Chief Judge John J. Sirica of the Federal District Court here. By 10 A.M. the room was filled with participants and with persons who had been forewarned that something was about to happen.

Six Acts Tied to Dean

Mr. Dean's attorney, Charles N. Shaffer, read into the record a letter dated yesterday in which Mr. Cox formally offered the bargain. The Government would "accept a guilty plea" to the single count to "dispose of all other potential charges which might otherwise arise out of the investigation of the so-called Watergate incident and the alleged cover-up."

Judge Sirica read the formal charges. The conspiracy to thwart the investigation, the judge read, was carried out in various ways, as follows:

1. Suborning perjury.

2. Giving and concealing evidence in the trial before Judge Sirica last winter of the men arrested in the break-in.

3. Offering clemency to the defendants.

4. Paying to keep the arrested men silent.

5. Paying to keep the arrested men silent.

6. Paying to keep the arrested men silent.

7. Paying to keep the arrested men silent.

8. Paying to keep the arrested men silent.

9. Paying to keep the arrested men silent.

10. Paying to keep the arrested men silent.

The investigation for information concerning the break-in to the Central Intelligence Agency to provide the money for the payment.

In furtherance of the conspiracy, Judge Sirica continued, Dean had committed six acts.

The judge read Dean had asked the deputy director of the C.I.A. whether the agency could use "covert funds" to pay the bail and salaries of the arrested men.

The list of overt acts itself indicated the additional crimes for which Dean could have been prosecuted. One act, for instance, was his meeting with Jeb Stuart Magruder of the Nixon campaign staff to arrange for Magruder's perjured testimony before the grand jury, an act that could have led to Dean's prosecution for suborning perjury.

The charges read, Judge Sirica called in Mr. Neal to sum up the evidence against Dean. Mr. Neal, who resigned today, for personal reasons, noted that the co-conspirators included both Magruder and Frederick C. Laue, special assistant to Mr. Mitchell, both of whom have already pleaded guilty to the conspiracy, as well as "others" unnamed.

Both Mr. Neal and Mr. Shaffer said that the prosecution had made no promises to Dean regarding sentence. Then, after Judge Sirica asked the defendant the customary questions regarding the voluntariness of the plea, the clerk took over. "How do you plead?" he asked.

"I plead guilty," Dean replied.

President Nixon dismissed Dean last spring. At that point and for months to come, the lawyer held out for a full grant of immunity from prosecution before he would agree to testify, saying he refused to be made the "scapegoat." The Senate gave him immunity from prosecution based on the use of his Senate testimony, but Mr. Cox held out, insisting on the bargain that Dean accepted today.

In a written statement distributed after court recessed, Dean explained "I have resolved that matter and I have confidence that I cannot and will not be made the scapegoat." He said though that he probably could have avoided prosecution on legal technicalities, but that that would have been a "shallow victory."



64. On October 20, 1973 Richardson wrote to the President. Richardson stated that he had regarded the proposal he submitted to Cox as reasonable, but that he had not believed that the price for access to the tapes in this manner would be the renunciation of any further attempt by him to resort to judicial process. Richardson stated that the proposal he had submitted to Cox did not purport to deal with other tapes, notes or memoranda of Presidential conversations, and that in the circumstances he would hope that some further accommodation could be found.

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I note these points only in the interest of historical accuracy, in the unhappy event that our correspondence should see the light of day. As I read your comments of the 18th and your letter of the 19th, the differences between us remain so great that no purpose would be served by further discussion of what I continue to think was a "very reasonable"—indeed an unprecedentedly generous—proposal that the Attorney General put to you in an effort, in the national interest, to resolve our disputes by mutual agreement at a time when the country would be particularly well served by such agreement.

Sincerely,

(Signed) Charlie
CHARLES ALAN WRIGHT.

TAB F

THE WHITE HOUSE,
Washington, D.C., October 19, 1973.

The Honorable ELLIOT RICHARDSON,
The Attorney General, Department of Justice, Washington, D.C.

DEAR ELLIOT: You are aware of the actions I am taking today to bring to an end the controversy over the so-called Watergate tapes and that I have reluctantly agreed to a limited breach of Presidential confidentiality in order that our country may be spared the agony of further indecision and litigation about those tapes at a time when we are confronted with other issues of much greater moment to the country and the world.

As a part of these actions, I am instructing you to direct Special Prosecutor Archibald Cox of the Watergate Special Prosecution Force that he is to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations. I regret the necessity of intruding, to this very limited extent, on the independence that I promised you with regard to Watergate when I announced your appointment. This would not have been necessary if the Special Prosecutor had agreed to the very reasonable proposal you made to him this week.

Sincerely,

RICHARD NIXON.

THE ATTORNEY GENERAL,
Washington, D.C., October 20, 1973.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: Thank you for your letter of October 19, 1973, instructing me to direct Mr. Cox that he is to make no further attempts by judicial process to obtain tapes, notes or memoranda of Presidential conversations.

As you point out, this instruction does intrude on the independence you promised me with regard to Watergate when you announced my appointment. And, of course, you have every right as President to withdraw or modify any understanding on which I hold office under you. The situation stands on a different footing, however, with respect to the role of the Special Prosecutor. Acting on your instruction that if I should consider it appropriate, I would have the authority to name a special prosecutor, I announced a few days before my confirmation hearing began that I would, if confirmed, "appoint a Special Prosecutor and give him all the independence, authority, and staff support needed to carry out the tasks entrusted to him." I added, "Although he will be in the Department of Justice and report to me—and only to me—he will be aware that his ultimate accountability is to the American people."

At many points throughout the nomination hearings, I reaffirmed my intention to assure the independence of the Special Prosecutor, and in my statement of his duties and responsibilities I specified that he would have "full authority" for "determining whether or not to contest the assertion of 'Executive Privilege' or any other testimonial privilege." And while the Special Prosecutor can be removed from office for "extraordinary improprieties," his charter specifically states that "The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions."

Quite obviously, therefore, the instruction contained in your letter of October 19 gives me serious difficulty. As you know, I regarded as reasonable and constructive the proposal to rely on Senator Stennis to prepare a verified record of the so-called Watergate tapes and I did my best to persuade Mr. Cox of the desirability of this solution of that issue. I did not believe, however, that the price of access to the tapes in this manner should be the renunciation of any further attempt by him to

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resort to judicial process, and the proposal I submitted to him did not purport to deal with other tapes, notes, or memoranda of Presidential conversations.

In the circumstances I would hope that some further accommodation could be found along the following lines:

First, that an effort be made to persuade Judge Sirica to accept for purposes of the Grand Jury the record of the Watergate tapes verified by Senator Stennis. In that event, Mr. Cox would, as he has said, abide by Judge Sirica's decision.

Second, agreement should be sought with Mr. Cox not to press any outstanding subpoenas which are directed merely to notes or memoranda covering the same conversations that would have been furnished in full through the verified record.

Third, any future situation where Mr. Cox seeks judicial process to obtain the record of Presidential conversations would be approached on the basis of the precedent established with respect to the Watergate tapes. This would leave to be handled in this way only situations where a showing of compelling necessity comparable to that made with respect to the Watergate tapes had been made.

If you feel it would be useful to do so, I would welcome the opportunity to discuss this matter with you.

Respectfully,

ELLIOT L. RICHARDSON,
Attorney General.

TAB G

OCTOBER 20, 1973.

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: It is with deep regret that I have been obliged to conclude that circumstances leave me no alternative to the submission of my resignation as Attorney General of the United States.

At the time you appointed me, you gave me the authority to name a special prosecutor if I should consider it appropriate. A few days before my confirmation hearing began, I announced that I would, if confirmed, "appoint a special prosecutor and give him all the independence, authority, and staff support needed to carry out the tasks entrusted to him." I added, "Although he will be in the Department of Justice and report to me—and only to me—he will be aware that his ultimate accountability is to the American people."

At many points throughout the nomination hearings, I reaffirmed my intention to assure the independence of the special prosecutor, and in my statement of his duties and responsibilities, I specified that he would have "full authority" for "determining whether or not to contest the assertion of 'Executive Privilege' or any other testimonial privilege." And while the special prosecutor can be removed from office for "extraordinary improprieties," I also pledged that "The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions."

While I fully respect the reasons that have led you to conclude that the Special Prosecutor must be discharged, I trust that you understand that I could not in the light of these firm and repeated commitments carry out your direction that this be done. In the circumstances, therefore, I feel that I have no choice but to resign.

In leaving your Administration, I take with me lasting gratitude for the opportunities you have given me to serve under your leadership in a number of important posts. It has been a privilege to share in your efforts to make the structure of world peace more stable and the structure of our own government more responsive. I believe profoundly in the rightness and importance of those efforts, and I trust that they will meet with increasing success in the remaining years of your Presidency.

Respectfully,

ELLIOT L. RICHARDSON.

II

MATERIALS RELATING TO DISCUSSION OF COX JURISDICTION

Tab A—Cox request and September 28 response by AG to SP re Andreas investigation.

Tab B—Cox letter to Congressman Moss re Haig appointment, discussing scope of Cox jurisdiction.

65. On October 20, 1973 the President instructed Richardson to discharge Cox. Richardson told the President that he could not comply with this directive and submitted his resignation. Haig thereupon called Deputy Attorney General William Ruckelshaus and asked Ruckelshaus to fire Cox. Ruckelshaus refused to carry out the President's directive and resigned. Haig called Solicitor General Robert Bork. Bork went to the White House where he agreed to fire Cox and signed a letter discharging Cox. Later that night White House Press Secretary Ziegler announced that the President had abolished the office of the Watergate Special Prosecution Force.

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My position at that time was that Senator Stennis's verified record of the tapes should nevertheless be presented to the District Court for the Court's determination of its adequacy to satisfy the subpoenas, still leaving other question to be dealt with as they arose.

That was still my view when at 8:00 p.m. Friday evening, the President issued his statement directing Mr. Cox to make no further attempts, by judicial process, to obtain tapes, notes, or memoranda of Presidential conversations.

A half hour before this statement was issued, I received a letter from the President instructing me to give Mr. Cox this order. I did not act on the instruction, but instead, shortly after noon on Saturday, sent the President a letter restating my position.

You have, I believe, copies, both of the President's letter and of my reply.

The President, however, decided to hold fast to the position he had announced the night before. When, therefore, Mr. Cox rejected that position and gave his objections to the Stennis Proposal, as well as his reasons for insisting on assu [sic] access to other tapes and memoranda, the issue of Presidential authority versus the independence and public accountability of the Special Prosecutor, was squarely joined.

The President, at that point, thought he had no choice but to direct the Attorney General to discharge Mr. Cox

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And I, given my role in guaranteeing the independence of the Special Prosecutor, as well as my belief in the public interest embodied in that role, felt equally clear that I could not discharge him. And so I resigned.

At stake, in the final analysis, is the very integrity of the Governmental processes I came to the Department of Justice to help restore. My own single most important commitment to this objective was my commitment to the independence of the Special Prosecutor.

I could not be faithful to this commitment and also acquiesce in the curtailment of his authority. To say this, however, is not to charge the President with a failure to respect the claims of the investigative process.

Given the importance he attached to the principle of Presidential confidentiality, he believed that his willingness to allow Senator Stennis to verify the subpoenaed tapes fully met these claims. The rest is for the American people to judge and on the fairness with which you do so may well rest the future well-being and [sic] security of our beloved country.

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sign affairs and national security agencies. Rather, it involves the preservation of the basic ability of the executive branch to continue to function and perform the responsibilities assigned to it by the Constitution. Unless privacy in the preliminary exchange of views between personnel of the Executive agencies can be maintained, the healthy expression of opinion and the frank, forthright interplay of ideas that are essential to sound policy and effective administration cannot survive.

RICHARD NIXON

The White House,
October 23, 1973.

Presidential Tapes

*News Conference of Alexander M. Haig, Jr.,
Assistant to the President, and Charles Alan Wright,
Consultant to the Counsel to the President, on the
President's Decision To Comply With Court
Order Requiring Production of the Tapes.
October 23, 1973*

MR. ZIEGLER. Ladies and gentlemen, in light of today's events, I thought it would be worthwhile to have Professor Charles Wright, who has been consulting with the White House Counsel's office, to come before you today to make some remarks and take some of your questions, and also the Assistant to the President, Al Haig, who has participated in the events of the past week, together with other members of the White House staff.

But first, before we go to their remarks and give them an opportunity to answer some of your questions, I would like to announce that tomorrow night at 9 p.m., eastern time, President Nixon will address the Nation on the recent events, including today's decision. The President's address will be carried on live television and radio.¹

I think we will begin with General Haig, who can outline for you, first of all, some of the events of the past week that led to this decision, and then Professor Wright can discuss some of the matters relating to the court procedures, and then we can go to questions for a while. General Haig.

GENERAL HAIG. Ladies and gentlemen, what I thought I would try to do this afternoon is try to put some perspective on what one journalist has referred to as the firestorm, and try, to the degree I can, to present to you and the American people some of the considerations that led up to the events of this past weekend and culminated in today's Presidential decision, and in doing that I think it is quite important that we go back in time a bit to a period of the weekend before last.

¹ On Wednesday, October 24, the White House announced that because of his concentration on developments in the Middle East, the President would not address the Nation that evening but would later hold a televised news conference. For the President's news conference of October 26, see page 1297 of this issue.

And it was at this juncture that the President, after very careful consideration and full consultation with his advisers, especially those on his legal staff, determined that he would make a herculean effort to resolve what had become a highly profiled and extremely controversial issue; that is, the issue surrounding the data and the information contained on the Presidential tapes of conversations which took place with various individuals in the President's office here in the White House and in the Executive Office Building.

Now, there were two factors that led the President to conclude that the time had come to resolve this very, very controversial issue. One of them involved the domestic scene itself, and the storm of controversy that raged around this issue.

I don't think it requires a blueprint for this group here to emphasize that the issue itself had progressively begun to polarize our body politic. Lines were clearly being drawn both within the Congress, within the media, and I think to a large extent within the viewpoint of the American people themselves.

There were such tales being banded about that the recent nomination of a new Vice President would be held in hostage to a Supreme Court decision on the tapes issue, and the President to defy the court, then we would move with an impeachment against the President, and with no Vice President there would be a turnover of the Government to a party which did not win November's election.

Now these kinds of considerations, and the realization on our part here that the period of time between the decision of the appellate court and the adjudication of this issue by the Supreme Court would result in even more intense political line-drawing, more intense disunity, and more intense doubt and conflict here at home, and that was certainly a major consideration in the President's determination to try to find a solution in the interest of the overall good of the American people.

Now, there were also international implications of some gravity which led to this Presidential decision. I want to say this very carefully and very precisely, but certainly, certainly any foreign leader, whether he be friend or potential foe, must in a period of turmoil here at home make his calculations about the unity, the permanency, the strength and resilience of this Government in a way that had to take consideration of this tape issue into mind.

Now, what I am not saying, gentlemen and ladies, is that the tape issue brought about international crisis of any kind or was, perhaps, the cause for the Middle East tension which was resolved so happily in recent hours. But what I am saying is that any foreign leader who assesses this Government and its relationships with this Government, whether it be in negotiations or long-term assessments, has got to perceive that the degree of unity and effectiveness of this Government is a key factor in those calculations, and indeed it is; it always is.

earlier that afternoon, the Attorney General did express some reservations about that aspect of the proposal—some reservations about that aspect of the proposal.

Be that as it may, on Saturday morning we learned here in the White House that Professor Cox was convening a press conference for 1 o'clock Saturday afternoon. Now, on Friday night, when these events drew to a conclusion, we all assumed that Professor Cox had three options, or four, depending on the variance that you care to discuss.

First, he could have said, "I have acquired the information which I have subpoenaed which is necessary in my view to bring these cases to litigation."

Secondly, he could have determined that the prohibition which would not grant him *carte blanche* to request further tapes or personal Presidential memoranda was not acceptable. Had he chosen that option, he could have resigned, with all the implications that that would have had for the participants and for the American people to digest and make their own judgment with respect to the validity of that course of action and the course of action pursued by the President.

An option of that is, he could have delayed. He could have waited, and perhaps waited until further justification developed for a resumption of his needs, should they have developed.

Or, as he finally selected to do, he could appear before the Washington press corps and directly rebut and challenge the President of the United States.

Having done that, I think few Americans will argue that any President faced with this kind of a dilemma can only act as President Nixon did and that is to fire the individual in the executive branch who refused to obey a legitimate order, and that is precisely what ensued.

Now, as Elliot Richardson said this morning, it was in the face of this action, and the personal dilemmas that he, himself, was then faced with—that is, being the instrument of the separation of Professor Cox—that he informed the President on Saturday afternoon that he could not serve as that instrument. A similar situation, with somewhat different background, justified Mr. Ruckelshaus' parallel decision.

Now, gentlemen, that is the sequence of events that led us through the firestorm of this weekend. And this morning, after assessing all of the considerations and the outcome of those actions, which were not pre-planned, not desired, and indeed, I think probably not very well visualized on Friday morning by all participants, this is the setting in which the President entered the Oval Office this morning.

I don't have to describe for you some of the backdrop of this morning's atmosphere, but that being true, and having experienced an additional week of some fairly high tensions in our international business, the President concluded, after very painful and anguishing discussion with me, with his counsel, that the circumstances were

sufficiently grave in the context of our national attitudes on this issue, which I must say in my view have been subject to a great deal of misunderstanding, a great deal of misinformation over the past weekend, but in the light of this situation, the President decided that he would abandon, on this occasion, these very strongly held and long held convictions that he, as President of these United States, has the obligation, indeed, to protect the rights and prerogatives of this office not only for himself but for subsequent Presidents in our upcoming history.

Having made that decision, he instructed Professor Wright, sometime around noon today, to prepare to inform Judge Sirica at 2 p.m. this afternoon, at Judge Sirica's hearing, that the President would indeed comply with Judge Sirica's decision, as modified by the appellate court, and turn over the tapes for *in camera* inspection to Judge Sirica.

Now, there have been a number of terms used to characterize the President's decision. I, for one, having worked very closely with him throughout this week's period—you know someone said to me before I came here, "You are going to miss the excitement and danger of professional soldiering," and I would tell them today that if our maelstrom ever develops heroes, it is the politician and the political combatant who really deserve the medals.

But be that as it may, I would like to leave you with my conviction that what the President did today in a most painful and agonizing way is to make this single exception to his held conviction, and to do so in a way that in the very near future the truth of an issue which has long anguished all of you and many American people will be resolved. I am confident it will be resolved along the lines that the President has repeatedly articulated to the American people as factual.

Now, I think I have said enough, and I will turn it over to Professor Wright.

Q. Are we going to get to question General Haig before he leaves?

MR. ZIEGLER. Yes, we will proceed with questions as soon as Professor Wright finishes.

PROFESSOR WRIGHT. And I am not going to delay you unduly, Miss McClendon, I hope, in getting into the questioning, but merely to add a very tiny bit from my own perspective of these dramatic events.

I spent the first half of last week, while these negotiations Al has talked about were going on, in Austin teaching my classes, preparing a petition for certiorari that I fully expected to file on Friday. Indeed, the petition was in print. It would be an interesting memento. I have actually not seen a copy, but the decision was not finally made until 6:30 Friday night that we weren't going to file it. We even had a check for \$100 to the clerk to pay the filing fee all ready to go.

I was not aware at that time of compromise negotiations, and when I was informed of them when I got up

Q. Besides firing the Special Prosecutor, why was it necessary to shut down his office? You know some of us were writing that the President was more concerned about what Cox was developing than about the tapes, and lo and behold, here it is Tuesday, he has given over the tapes, but the office is gone.

PROFESSOR WRIGHT. I think that the answer is that when the Special Prosecutor took the position that he did, making it necessary for the President to discharge him, that it hardly made sense to keep the Special Prosecutor's handpicked force of people at work, even if a new special prosecutor were brought in, that it made much more sense to get back into the institutional framework and let Henry Petersen have the assistance that he feels that he requires.

Q. Are you suggesting that the handpicked people of Mr. Cox were either unethical in their pursuit of the investigations or were incapable or incompetent or lacked integrity or were so prejudiced that they were out to get the President?

PROFESSOR WRIGHT. I am suggesting no such thing. I am suggesting only that anybody who has the responsibility for an investigation of this magnitude would, I think, want to have his own people rather than those who had been picked by someone else.

Q. I want to ask you if the President didn't go back on his word? Did he not say that he would not interfere with the work of the Special Prosecutor and also that the Special Prosecutor could act independently and then did he not come through and fire the Special Prosecutor and say nobody in the executive branch of the Government under me can disobey me?

PROFESSOR WRIGHT. He did those things, but I would not accept, Miss McClendon, your adjective to describe them. I would support what General Richardson said today, that the President must always be free in the light of changing national circumstances to change his mind about the conditions in which he has asked people to work for him. In this situation the President believed that he was making a concession so very great from his point of view in allowing the Stennis report to go forward that it was necessary in order to put the tape issue to rest that there be this one limited intrusion on the independence of the Special Prosecutor.

Q. General Haig, is there any provision in the procedure that will be followed now that would permit public disclosure of what is on these tapes, or is the public not going to be able to find out what is on the tapes?

GENERAL HAIG. Well, I can't give you a direct and precise prediction on that, but it is quite obvious to me that Judge Sirica has to make a number of determinations in dealing with this issue, and certainly the pertinent aspects of these tapes in my view will be known as they pertain to Watergate and Watergate coverage.

Q. General Haig, did you use the words "The Commander in Chief" in issuing your orders?

GENERAL HAIG. Anybody who knows me knows what a militarist I am.

Now I will tell you as best I can recall what I said to Bill Ruckelshaus.

"Helle, Bill, this is Al."

"Right, Al, I expected your call, and Bob Borik is sitting here with me."

"As you probably know, Elliot Richardson feels he cannot execute the orders of the President."

"That is right. I know that."

"Are you prepared to do so?"

"No."

As I recall, I said, "Well, you know what it means when an order comes down from the Commander-in-Chief and a member of his team cannot execute it."

He said, "That is right." And I think we both understood at that moment that he was neither fired nor resigned but somewhere in between with a happy mutual term that I haven't developed.

Q. General Haig, you have quoted the former Attorney General a number of times today, always favorably. Is there a move on your part to invite him back?

GENERAL HAIG. That would be a big part for me to do such a thing. No, I am not aware of any plan. Obviously, the Attorney General's departure is a departure that we all regret very, very much.

Q. From an historical point of view, to what extent does this erode the executive branch if the courts can go in and constantly chip away? From an historical point of view, I would like to know.

PROFESSOR WRIGHT. I think it does. I think this is why the President has fought hard and why we have fought hard all summer on a matter of principle that we thought of great importance, and finally the decision simply was that the condition of America today so requires a resolution of this issue that we had to bear up even with the decision of the Court of Appeals that we thought to be erroneous and damaging.

REPORTER. Thank you, gentlemen.

NOTE: Press Secretary Ronald L. Ziegler introduced General Haig and Professor Wright at 4:38 p.m. in the Briefing Room at the White House.

National Council on Indian Opportunity

Announcement of Reappointment of Four Members of the Council. October 24, 1973

The President today announced the reappointment of four persons as members of the National Council on Indian Opportunity for terms expiring August 31, 1975. They are:

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5:00 AG Conf. Room: Staff Meeting (ELR did not attend).
8:00 1100 Crest Lane: informal dinner for WDR.

THURSDAY, OCTOBER 18, 1973

9:00 AG: P.A. Meeting.
10:00 AG: Budget Appeals Meeting—Norman Carlson and staff (Prisons).
11:15 AG: Budget Appeals Meeting (CRS) Don Jones and staff.
11:40-12:40 AG Conf. Room: Backgrounder for Newsmen re DOJ Management Study.
2:00 AG: Budget Appeals Meeting (INS) Jim Green and staff.
3:00 White House Cabinet Room: Cabinet Meeting.
6:00 White House: General Haig.

FRIDAY, OCTOBER 19, 1973

8:00 AG: JM, JTS, RGD.
10:00 White House: General Haig.
1:00 AG Dining rm.: JTS, RGD, JM and joined by WDR.
5:00 AG: WDR, JM, JTS, RGD.
7:00 10:45 AG: H. Webb joined group.

SATURDAY, OCTOBER 20, 1973

10:00 a.m.: arrived AG's office.
11:00: WDR, JM, JTS, RGD.
1:30: lunch served in AG's office.
2:00: Prof. Bork and Hushen joined group.
3:30: to White House to see General Haig, Buzhardt, Garment? and others?
4:00(?): saw President.
5:15 (approx.): returned to office.
7:20 (approx.): sent John Scott to White House to deliver ELR and WDR's resignation.
8:45 p.m.: (approx.) left office for home.
9:35 p.m.: FBI arrived to seal off AG's suite.

TAB B

ATTORNEY GENERAL'S TELEPHONE CALLS—MONDAY, OCTOBER 15, 1973

General Haig—from 12:10.
General Haig—from 1:15.
General Haig—to 2:55 (unable to take call); returned call 3:20.
General Haig—from 4:05.

TUESDAY, OCTOBER 16, 1973

General Haig—from 9:15.
J. Fred Buzhardt—to 9:40.
General Haig—to 10:05 (unable to take call).
Congressman Rodino—from 5:20 (ELR not back in office from NYC).
General Haig—returned a.m. call 5:40 (ELR not back in office yet).
Archibald Cox—to 5:50.
General Haig—to 7:00.
General Haig—to 7:10.

WEDNESDAY, OCTOBER 17, 1973

Archibald Cox—to 9:25.
J. Fred Buzhardt—to 11:35.
J. Fred Buzhardt—from 3:10.
Chairman Robert Hampton—from (time not noted).
Archibald Cox—to 6:20.
General Haig—to 7:00 (unable to take call); returned call 7:12.

their jurisdiction and their responsibility. But we in the Congress, if we are concerned about independence, I think have to weigh that right and that interest in determining how we effect true independence.

Now you in all sincerity believe that the President's Special Prosecutor is independent. Frankly, I don't. I think we are going down that same set of tracks that got us into terrible trouble.

I would like for you to share with the committee as well as you can some of the conversations you had in order to give us a better perspective of how the White House might go about impressing their interest and their will on individuals who might not be as courageous or forthright as you are, Mr. Bork.

On a Sunday television program in which you were the main course——

Mr. BORK. I think the only course, Senator.

Senator BAYH [continuing]. You responded to a question that had been raised by Mr. Graham as I recall which involved a possible conversation that you had with General Haig about the time the dismissal of Mr. Cox was being discussed or the time you were ordered or requested to discharge Mr. Cox, and that conversation was that you might be in line or at the top of the list for a Supreme Court nomination. Now that wouldn't concern me nearly so much if we hadn't gone through the Ellsberg situation with Judge Byrne being given the same kind of treatment. Did that conversation actually take place?

Mr. BORK. No, it was not, Senator. When I walked into the White House that night the White House did not know—and General Haig had asked me to come over on the phone on the same call that he spoke to William Ruckelshaus—they did not know that I had made up my mind before I got there to comply with the directive.

When I came in General Haig began to discuss the importance of preserving the President's ability to control the executive branch at a time of international crisis. I said: "You need not go on. I have made up my mind to carry out the directive." He did not discuss the Supreme Court with me. He did not offer me the Supreme Court position. He never said I was at the top of any list.

Senator BAYH. Had he prior to that time suggested that you might be at the top of the list?

Mr. BORK. No. Not at the top of the list. Early on when I first came down here as Solicitor General, there had been some talk that that might someday come about. I was not promised anything. I was not told I was at the top of any list. And the subject was never mentioned to me as an inducement to do anything.

Senator BAYH. I am sure you didn't consider it that way at all. Could you tell us who mentioned it to you?

Mr. BORK. Well, I think it was right after I got down here General Haig mentioned it to me. I must say you know, that if that had been in anybody's mind, it seems to me that October 20 was not the way to improve that situation, so I didn't regard that as cutting fudge either way and——

Senator BAYH. Was that the only time General Haig or anybody else involved in White House affairs had mentioned the possibility of a Supreme Court appointment?

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under out of any political or personal animous [sic] towards Mr. Cox. Mr. Cox has a reputation for great integrity and great ability, and from my observation of him, I have no reason to doubt those judgments that the world has made of him.

I did it because it was apparent at the time I was called upon to make the decision that the decision of the President to discharge Mr. Cox was final and irrevocable. It was going to be done. I also believe that the President has the right to discharge any member of the Executive Branch he chooses to discharge. I further thought that if I did not do it, but resigned, or was discharged, the pattern I set after Elliot Richardson and William French Smith had refused would probably lead to mass departures in the Department of Justice. The Department would be left in a chaotic condition and badly crippled.

I did not want to see the harm go any further in the Department than the resignation of two extremely able men. And I am, in fact, now doing my best to see that it does not go any further.

I then went to the White House where I signed the letter discharging Mr. Cox. My next act, realizing the position I was in, was to call Henry Petersen and ask him, with as much persuasiveness as I could muster, to stay with us, because I think Henry Petersen is indispensable to the Department at this stage. His reputation for ability and integrity is

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ing of the circumstances which brought you to your decision that I accept your resignation.

Sincerely,

RICHARD NIXON

[Honorable Elliot L. Richardson,
The Attorney General,
Justice Department,
Washington, D.C.]

October 20, 1973

Dear Mr. President:

It is with deep regret that I have been obliged to conclude that circumstances leave me no alternative to the submission of my resignation as Attorney General of the United States.

At the time you appointed me, you gave me the authority to name a special prosecutor if I should consider it appropriate. A few days before my confirmation hearing began, I announced that I would, if confirmed, "appoint a special prosecutor and give him all the independence, authority, and staff support needed to carry out the tasks entrusted to him." I added, "Although he will be in the Department of Justice and report to me—and only to me—he will be aware that his ultimate accountability is to the American people."

At many points throughout the nomination hearings, I reaffirmed my intention to assure the independence of the special prosecutor, and in my statement of his duties and responsibilities, I specified that he would have "full authority" for "determining whether or not to contest the assertion of 'Executive Privilege' or any other testimonial privilege." And while the special prosecutor can be removed from office for "extraordinary improprieties," I also pledged that "The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions."

While I fully respect the reasons that have led you to conclude that the Special Prosecutor must be discharged, I trust that you understand that I could not in the light of these firm and repeated commitments carry out your direction that this be done. In the circumstances, therefore, I feel that I have no choice but to resign.

In leaving your Administration, I take with me lasting gratitude for the opportunities you have given me to serve under your leadership in a number of important posts. It has been a privilege to share in your efforts to make the structure of world peace more stable and the structure of our own government more responsive. I believe profoundly in the rightness and importance of those efforts, and I trust that they will meet with increasing success in the remaining years of your Presidency.

Respectfully,

ELLIOT L. RICHARDSON

[The President, The White House]

Discharge of Watergate Special Prosecutor

*Letters of the President and the Acting Attorney General.
October 20, 1973*

October 20, 1973

Dear Mr. Bork:

I have today accepted the resignations of Attorney General Richardson and Deputy Attorney General Ruckelshaus. In accordance with Title 28, Section 508(b) of the United States Code and of Title 28, Section 0.132(a) of the Code of Federal Regulations, it is now incumbent upon you to perform both the duties as Solicitor General, and duties of and act as Attorney General.

In his press conference today Special Prosecutor Archibald Cox made it apparent that he will not comply with the instruction I issued to him, through Attorney General Richardson, yesterday. Clearly the Government of the United States cannot function if employees of the Executive Branch are free to ignore in this fashion the instructions of the President. Accordingly, in your capacity of Acting Attorney General, I direct you to discharge Mr. Cox immediately and to take all steps necessary to return to the Department of Justice the functions now being performed by the Watergate Special Prosecution Force.

It is my expectation that the Department of Justice will continue with full vigor the investigations and prosecutions that had been entrusted to the Watergate Special Prosecution Force.

Sincerely,

RICHARD NIXON

[Honorable Robert H. Bork,
The Acting Attorney General,
Justice Department,
Washington, D.C.]

October 20, 1973

Dear Mr. Cox:

As provided by Title 28, Section 508(b) of the United States Code and Title 28, Section 0.132(a) of the Code of Federal Regulations, I have today assumed the duties of Acting Attorney General.

In that capacity I am, as instructed by the President, discharging you, effective at once, from your position as Special Prosecutor, Watergate Special Prosecution Force.

Very truly yours,

ROBERT H. BORK
Acting Attorney General

[Honorable Archibald Cox,
Special Prosecutor,
Watergate Special Prosecution Force,
1425 K Street, N.W.,
Washington, D.C.]

Administration of Richard Nixon

PRESIDENTIAL DOCUMENTS

*Week Ending Saturday, October 27, 1973*Watergate Special Prosecution Force
and Department of Justice

*Remarks of Press Secretary Ronald L. Ziegler
Announcing Discharge of the Special Prosecutor,
Abolishment of the Force, and Departure From Office
of the Attorney General and Deputy Attorney General.
October 20, 1973*

I know many of you are on deadline. I have a brief statement to give you at this time, and following the reading of the statement we will have an exchange of a series of letters relating to action which President Nixon has taken tonight.

President Nixon has tonight discharged Archibald Cox, the Special Prosecutor in the Watergate case. The President took this action because of Mr. Cox's refusal to comply with instructions given Friday night through Attorney General Richardson, that he was not to seek to invoke the judicial process further to compel production of recordings, notes, or memoranda regarding private Presidential conversations.

Further, the office of the Watergate Special Prosecution Force has been abolished as of approximately 8 p.m. tonight. Its function to investigate and prosecute those involved in the Watergate matter will be transferred back into the institutional framework of the Department of Justice, where it will be carried out with thoroughness and vigor.

In his statement Friday night, and in his decision not to seek Supreme Court review of the Court of Appeals decision with regard to the Watergate tapes, the President sought to avoid a constitutional confrontation by an action that would give the grand jury what it needs to proceed with its work with the least possible intrusion of Presidential privacy. That action taken by the President in the spirit of accommodation that has marked American constitutional history was accepted by responsible leaders in

Congress and the country. Mr. Cox's refusal to proceed in the same spirit of accommodation, complete with his announced intention to defy instructions from the President and press for further confrontation at a time of serious world crisis, made it necessary for the President to discharge Mr. Cox and to return to the Department of Justice the task of prosecuting those who broke the law in connection with Watergate.

Before taking this action, the President met this evening with Attorney General Richardson. He met with Attorney General Richardson at about 4:45 today for about 30 minutes.

The Attorney General, on hearing of the President's decision, felt obliged to resign, since he believed the discharge of Professor Cox to be inconsistent with the conditions of his confirmation by the Senate.

As Deputy Attorney General, Mr. William Ruckelshaus refused to carry out the President's explicit directive to discharge Mr. Cox. He, like Mr. Cox, has been discharged of further duties effective immediately.

Professor Cox was notified of his discharge by the Acting Attorney General, the Solicitor General, Robert H. Bork, professor of law from Yale University.

We have available for you now the exchange of letters between Attorney General Richardson and the President and the other correspondence.

NOTE: Mr. Ziegler spoke at 8:22 p.m. in the Briefing Room at the White House

For the text of the letters, see the following two items.

Attorney General of the United States

*Exchange of Letters Between the President and
Elliot L. Richardson on Mr. Richardson's Resignation.
October 20, 1973*

October 20, 1973

Dear Elliot:

It is with the deepest regret and with an understand-

66. On October 23, 1973 the President authorized his Special Counsel Wright to inform Judge Sirica that the subpoenaed tapes would be turned over to the court.

Page

66.1 Alexander Haig and Charles Alan Wright news
conference, October 23, 1973, 9 Presidential
Documents 1275, 1277-78..... 828

sign affairs and national security agencies. Rather, it involves the preservation of the basic ability of the executive branch to continue to function and perform the responsibilities assigned to it by the Constitution. Unless privacy in the preliminary exchange of views between personnel of the Executive agencies can be maintained, the healthy expression of opinion and the frank, forthright interplay of ideas that are essential to sound policy and effective administration cannot survive.

RICHARD NIXON

The White House,
October 23, 1973.

Presidential Tapes

News Conference of Alexander M. Haig, Jr., Assistant to the President, and Charles Alan Wright, Consultant to the Counsel to the President, on the President's Decision To Comply With Court Order Requiring Production of the Tapes. October 23, 1973

MR. ZIEGLER. Ladies and gentlemen, in light of today's events, I thought it would be worthwhile to have Professor Charles Wright, who has been consulting with the White House Counsel's office, to come before you today to make some remarks and take some of your questions, and also the Assistant to the President, Al Haig, who has participated in the events of the past week, together with other members of the White House staff.

But first, before we go to their remarks and give them an opportunity to answer some of your questions, I would like to announce that tomorrow night at 9 p.m., eastern time, President Nixon will address the Nation on the recent events, including today's decision. The President's address will be carried on live television and radio.¹

I think we will begin with General Haig, who can outline for you, first of all, some of the events of the past week that led to this decision, and then Professor Wright can discuss some of the matters relating to the court procedures, and then we can go to questions for a while.

General Haig.

GENERAL HAIG. Ladies and gentlemen, what I thought I would try to do this afternoon is try to put some perspective on what one journalist has referred to as the firestorm, and try, to the degree I can, to present to you and the American people some of the considerations that led up to the events of this past weekend and culminated in today's Presidential decision, and in doing that I think it is quite important that we go back in time a bit to a period of the weekend before last.

¹On Wednesday, October 24, the White House announced that, because of his concentration on developments in the Middle East, the President would not address the Nation that evening but would later hold a televised news conference. For the President's news conference of October 26, see page 1287 of this issue.

And it was at this juncture that the President, after very careful consideration and full consultation with his advisers, especially those on his legal staff, determined that he would make a herculean effort to resolve what had become a highly profiled and extremely controversial issue; that is, the issue surrounding the data and the information contained on the Presidential tapes of conversations which took place with various individuals in the President's office here in the White House and in the Executive Office Building.

Now, there were two factors that led the President to conclude that the time had come to resolve this very, very controversial issue. One of them involved the domestic scene itself, and the storm of controversy that raged around this issue.

I don't think it requires a blueprint for this group here to emphasize that the issue itself had progressively begun to polarize our body politic. Lines were clearly being drawn both within the Congress, within the media, and I think to a large extent within the viewpoint of the American people themselves.

There were such tales being bandied about that the recent nomination of a new Vice President would be held in hostage to a Supreme Court decision on the tapes issue, and the President to defy the court, then we would move with an impeachment against the President, and with no Vice President there would be a turnover of the Government to a party which did not win November's election.

Now these kinds of considerations, and the realization on our part here that the period of time between the decision of the appellate court and the adjudication of this issue by the Supreme Court would result in even more intense political line-drawing, more intense disunity, and more intense doubt and conflict here at home, and that was certainly a major consideration in the President's determination to try to find a solution in the interest of the overall good of the American people.

Now, there were also international implications of some gravity which led to this Presidential decision. I want to say this very carefully and very precisely, but certainly, certainly any foreign leader, whether he be friend or potential foe, must in a period of turmoil here at home make his calculations about the unity, the permanency, the strength and resilience of this Government in a way that had to take consideration of this tape issue into mind.

Now, what I am not saying, gentlemen and ladies, is that the tape issue brought about international crisis of any kind or was, perhaps, the cause for the Middle East tension which was resolved so happily in recent hours. But what I am saying is that any foreign leader who assesses this Government and its relationships with this Government, whether it be in negotiations or long-term assessments, has got to perceive that the degree of unity and effectiveness of this Government is a key factor in those calculations, and indeed it is; it always is.

earlier that afternoon the Attorney General did express some reservations about that aspect of the proposal—some reservations about that aspect of the proposal.

Be that as it may, on Saturday morning we learned here in the White House that Professor Cox was convening a press conference for 1 o'clock Saturday afternoon. Now, on Friday night, when these events drew to a conclusion, we all assumed that Professor Cox had three options, or four, depending on the variance that you care to discuss.

First, he could have said, "I have acquired the information which I have subpoenaed which is necessary in my view to bring these cases to litigation."

Secondly, he could have determined that the prohibition which would not grant him *carte blanche* to request further tapes or personal Presidential memoranda was not acceptable. Had he chosen that option, he could have resigned, with all the implications that that would have had for the participants and for the American people to digest and make their own judgment with respect to the validity of that course of action and the course of action pursued by the President.

An option of that is, he could have delayed. He could have waited, and perhaps waited until further justification developed for a resumption of his needs, should they have developed.

Or, as he finally selected to do, he could appear before the Washington press corps and directly rebut and challenge the President of the United States.

Having done that, I think few Americans will argue that any President faced with this kind of a dilemma can only act as President Nixon did and that is to fire the individual in the executive branch who refused to obey a legitimate order, and that is precisely what ensued.

Now, as Elliot Richardson said this morning, it was in the face of this action, and the personal dilemmas that he, himself, was then faced with—that is, being the instrument of the separation of Professor Cox—that he informed the President on Saturday afternoon that he could not serve as that instrument. A similar situation, with somewhat different background, justified Mr. Ruckelshaus' parallel decision.

Now, gentlemen, that is the sequence of events that led us through the firestorm of this weekend. And this morning, after assessing all of the considerations and the outcome of those actions, which were not pre-planned, not desired, and indeed, I think probably not very well visualized on Friday morning by all participants, this is the setting in which the President entered the Oval Office this morning.

I don't have to describe for you some of the back-drop of this morning's atmosphere, but that being true, and having experienced an additional week of some fairly high tensions in our international business, the President concluded, after very painful and anguishing discussion with me, with his counsel, that the circumstances were

sufficiently grave in the context of our national attitudes on this issue, which I must say in my view have been subject to a great deal of misunderstanding, a great deal of misinformation over the past weekend, but in the light of this situation, the President decided that he would abandon, on this occasion, these very strongly held and long held convictions that he, as President of these United States, has the obligation, indeed, to protect the rights and prerogatives of this office not only for himself but for subsequent Presidents in our upcoming history.

Having made that decision, he instructed Professor Wright, sometime around noon today, to prepare to inform Judge Sirica at 2 p.m. this afternoon, at Judge Sirica's hearing, that the President would indeed comply with Judge Sirica's decision, as modified by the appellate court, and turn over the tapes for *in camera* inspection to Judge Sirica.

Now, there have been a number of terms used to characterize the President's decision. I, for one, having worked very closely with him throughout this week's period—you know someone said to me before I came here, "You are going to miss the excitement and danger of professional soldiering," and I would tell them today that if our maelstrom ever develops heroes, it is the politician and the political combatant who really deserve the medals.

But be that as it may, I would like to leave you with my conviction that what the President did today in a most painful and agonizing way is to make this single exception to his held conviction, and to do so in a way that in the very near future the truth of an issue which has long anguished all of you and many American people will be resolved. I am confident it will be resolved along the lines that the President has repeatedly articulated to the American people as factual.

Now, I think I have said enough, and I will turn it over to Professor Wright.

Q. Are we going to get to question General Haig before he leaves?

MR. ZIEGLER. Yes, we will proceed with questions as soon as Professor Wright finishes.

PROFESSOR WRIGHT. And I am not going to delay you unduly, Miss McClendon, I hope, in getting into the questioning, but merely to add a very tiny bit from my own perspective of these dramatic events.

I spent the first half of last week, while these negotiations Al has talked about were going on, in Austin teaching my classes, preparing a petition for certiorari that I fully expected to file on Friday. Indeed, the petition was in print. It would be an interesting memento. I have actually not seen a copy, but the decision was not finally made until 6:30 Friday night that we weren't going to file it. We even had a check for \$100 to the clerk to pay the filing fee all ready to go.

I was not aware at that time of compromise negotiations, and when I was informed of them when I got up

here at 2 o'clock Thursday afternoon, I was astonished that the President was willing to make such a reasonable, indeed I think an extraordinarily generous proposal. Having been privy to the President's thinking throughout the summer, I know how very deeply he values the principle of confidentiality, and that only the most persuasive evidence to him that the national interest required a limited intrusion could have persuaded him to make that proposal. Clearly, we all did miscalculate Friday night.

I see in the room a former student of mine who dropped by my hotel room about 10:30 Friday night when I was about to collapse exhaustedly into bed, and as he can tell you, my mood was euphoric. I checked out of the Madison Saturday morning, thinking I was done with White House employment forever, that the American people would give a tremendous sigh of relief at the thought that now we are going to hear what is in these tapes, and now we are not going to have a constitutional crisis.

Obviously that was a miscalculation. Saturday morning it still looked like a very good calculation. What we had miscalculated was that we had not thought that Mr. Cox would take the course of action that he did that led to further traumatic events.

As a result, by this morning it was apparent that, rather than a national sigh of relief and the end of a constitutional crisis, that the crisis was simply heightened. Under those circumstances, the President thought that the wisest thing in the public interest, in an effort really to put an end to this crisis, was to take the action that I announced in his behalf in court at a little bit after 2 o'clock this afternoon.

We had very good hope that Judge Sirica would have accepted the proposal we made as complying, as I think it did, with the needs of the grand jury, and with the reasons that have persuaded both the District Court and the Court of Appeals to hold that executive privilege should be overridden in this instance, but it was equally apparent that even if we were successful before Judge Sirica on that point, that there were people around the country who were saying, "The President is trying to defy the courts."

Now, the President, I am certain, has never at any time had in mind any thought of defying the courts. The one other time I appeared at this podium was on July 26, and I know that an hour before I appeared here, Jerry Warren made the statement that, as the President has always done, he obeys the law; he will abide by a definitive decision.

We had thought that the proposal that we made on Friday was not defiance of the law, but a reasonable accommodation that the court, we hoped, would accept as satisfactory, but if the thought were abroad in the land that the President was not complying with court orders, if a constitutional crisis persisted, then a wound that has hurt the American country deeply would have continued to drain. We wanted to cure that, and so the President

this morning, about noon, as Al has said, authorized us to make the announcement that we did.

We will comply in every particular with the order of the District Court as it was modified by the Court of Appeals.

Q. Mr. Wright, have you heard the tapes, the nine tapes?

PROFESSOR WRIGHT. I have never heard any tape.

Q. In other words your projection here is against a great deal of ignorance as to what is on the tapes?

PROFESSOR WRIGHT. Of course.

Q. You have only the self-serving declarations of the President and Mr. Haldeman to support whatever position you are taking?

PROFESSOR WRIGHT. I don't quite see how that follows.

Q. Well, the President has told you he is innocent.

PROFESSOR WRIGHT. We are producing the tapes, and the tapes will speak for themselves. Judge Sirica will examine them under the procedures of the court.

Q. Now, what you have said here about the tapes supporting the President is based upon what the President told you, and not upon you hearing the tapes?

PROFESSOR WRIGHT. Exactly so. I have the old-fashioned American habit of believing Presidents of the United States.

Q. You haven't had the experience I've had.

Q. Will you produce the documents called for in the subpoena?

PROFESSOR WRIGHT. Everything called for in the subpoena will be produced.

Q. Professor Wright, can you say if the President will turn over additional documents requested for the prosecution of suspected wrongdoers in connection with the case?

PROFESSOR WRIGHT. I simply don't know the answer to that question.

Did you catch the question, Al?

GENERAL HAIG. I am not sure I got the question.

PROFESSOR WRIGHT. Would you repeat the question?

Q. Maybe I can get an answer in a different way. Does this, the President's decision to allow Judge Sirica to examine these tapes, does this mean that he will not furnish any additional information requested for prosecution in the case?

PROFESSOR WRIGHT. I am certain it does not mean that, no, not at all. We have been furnishing a great deal of information, as Attorney General Richardson made clear this morning, that has never been involved in these subpoena controversies.

Q. A question for General Haig.

General, did I understand you correctly to say that the President's order of Friday night to Mr. Cox referred only to desisting from attempting to obtain additional tapes and additional memoranda and did not bar him from trying to get the nine tapes he had subpoenaed? Was that the order?

67. On October 26, 1973 the President announced at a news conference that he had decided that Acting Attorney General Bork would appoint a new special prosecutor. The President said that it was time for those who were guilty to be prosecuted and those who were innocent to be cleared. The President stated that he would see that the new Special Prosecutor had the cooperation from the executive branch and the independence that he needed to bring about that conclusion. The President stated in response to a question that he had dismissed Cox when Cox rejected a proposal that Richardson and others had approved.

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67.1 President Nixon news conference, October 26, 1973, 9 Presidential Documents 1287, 1289-90.....	832

In my view, the proper way for the Congress to make known its will on such foreign policy questions is through a positive action, with full debate on the merits of the issue and with each member taking the responsibility of casting a yes or no vote after considering those merits. The authorization and appropriations process represents one of the ways in which such influence can be exercised. I do not, however, believe that the Congress can responsibly contribute its considered, collective judgment on such grave questions without full debate and without a yes or no vote. Yet this is precisely what the joint resolution would allow. It would give every future Congress the ability to handcuff every future President merely by doing nothing and sitting still. In my view, one cannot become a responsible partner unless one is prepared to take responsible action.

Strengthening Cooperation Between the Congress and the Executive Branches

The responsible and effective exercise of the war powers requires the fullest cooperation between the Congress and the Executive and the prudent fulfillment by each branch of its constitutional responsibilities. House Joint Resolution 542 includes certain constructive measures which would foster this process by enhancing the flow of information from the executive branch to the Congress. Section 3, for example, calls for consultations with the Congress before and during the involvement of the United States forces in hostilities abroad. This provision is consistent with the desire of this Administration for regular-

ized consultations with the Congress in an even wider range of circumstances.

I believe that full and cooperative participation in foreign policy matters by both the executive and the legislative branches could be enhanced by a careful and dispassionate study of their constitutional roles. Helpful proposals for such a study have already been made in the Congress. I would welcome the establishment of a non-partisan commission on the constitutional roles of the Congress and the President in the conduct of foreign affairs. This commission could make a thorough review of the principal constitutional issues in Executive-Congressional relations, including the war powers, the international agreement powers, and the question of Executive privilege, and then submit its recommendations to the President and the Congress. The members of such a commission could be drawn from both parties—and could represent many perspectives including those of the Congress, the executive branch, the legal profession, and the academic community.

This Administration is dedicated to strengthening cooperation between the Congress and the President in the conduct of foreign affairs and to preserving the constitutional prerogatives of both branches of our Government. I know that the Congress shares that goal. A commission on the constitutional roles of the Congress and the President would provide a useful opportunity for both branches to work together toward that common objective.

RICHARD NIXON

The White House,
October 24, 1973.

THE PRESIDENT'S NEWS CONFERENCE OF OCTOBER 26, 1973

OPENING STATEMENT

THE SITUATION IN THE MIDDLE EAST

THE PRESIDENT. Ladies and gentlemen, before going to your questions, I have a statement with regard to the Mideast which I think will anticipate some of the questions, because this will update the information which is breaking rather fast in that area, as you know, for the past 2 days.

The cease-fire is holding. There have been some violations, but generally speaking it can be said that it is holding at this time. As you know, as a result of the U.N. resolution which was agreed to yesterday by a vote of 14 to 0, a peacekeeping force will go to the Mideast, and this force, however, will not include any forces from the major powers, including, of course, the United States and the Soviet Union.

The question, however, has arisen as to whether observers from major powers could go to the Mideast. My up-to-the-minute report on that, and I just talked to Dr. Kissinger 5 minutes before coming down, is this: We will send observers to the Mideast if requested by the Secretary

ent objectives in the Mideast, have now agreed that it is not in their interest to have a confrontation there, a confrontation which might lead to a nuclear confrontation and neither of the two major powers wants that.

We have agreed, also, that if we are to avoid that, it is necessary for us to use our influence more than we have in the past, to get the negotiating track moving again, but this time, moving to a conclusion—not simply a temporary truce, but a permanent peace.

I do not mean to suggest that it is going to come quickly because the parties involved are still rather far apart. But I do say that now there are greater incentives within the area to find a peaceful solution, and there are enormous incentives as far as the United States is concerned, and the Soviet Union and other major powers, to find such a solution.

Turning now to the subject of our attempts to get a cease-fire on the home front, that is a bit more difficult.

PRESIDENTIAL TAPES

Today White House counsel contacted Judge Sirica—we tried yesterday, but he was in Boston, as you know—and arrangements were made to meet with Judge Sirica on Tuesday to work out the delivery of the tapes to Judge Sirica.

WATERGATE SPECIAL PROSECUTOR

Also, in consultations that we have had in the White House today, we have decided that next week the Acting Attorney General, Mr. Bork, will appoint a new special prosecutor for what is called the Watergate matter. The special prosecutor will have independence. He will have total cooperation from the executive branch, and he will have as a primary responsibility to bring this matter which has so long concerned the American people, bring it to an expeditious conclusion, because we have to remember that under our Constitution it has always been held that justice delayed is justice denied. It is time for those who are guilty to be prosecuted, and for those who are innocent to be cleared. And I can assure you ladies and gentlemen, and all of our listeners tonight, that I have no greater interest than to see that the new special prosecutor has the cooperation from the executive branch and the independence that he needs to bring about that conclusion.

And now I will go to Mr. Cormier [Frank Cormier, Associated Press].

QUESTIONS

THE SPECIAL PROSECUTOR

Q. Mr. President, would the new special prosecutor have your go-ahead to go to court if necessary to obtain evidence from your files that he felt were vital?

THE PRESIDENT. Well, Mr. Cormier, I would anticipate that that would not be necessary. I believe that as we look at the events which led to the dismissal of Mr. Cox, we find that these are matters that can be worked out and should be worked out in cooperation and not by

having a suit filed by a special prosecutor within the executive branch against the President of the United States.

This, incidentally, is not a new attitude on the part of a President. Every President since George Washington has tried to protect the confidentiality of Presidential conversations, and you remember the famous case involving Thomas Jefferson where Chief Justice Marshall, then sitting as a trial judge, subpoenaed the letter which Jefferson had written which Marshall thought or felt was necessary evidence in the trial of Aaron Burr. Jeffer-

son refused to do so but it did not result in a suit. What happened was, of course, a compromise in which a summary of the contents of the letter which was relevant to the trial was produced by Jefferson, and the Chief Justice of the United States, acting in his capacity as Chief Justice, accepted that.

That is exactly, of course, what we tried to do in this instant case.

I think it would be well if I could take just a moment, Mr. Cormier, in answering your question to point out what we tried to do and why we feel it was the proper solution to a very aggravating and difficult problem.

The matter of the tapes has been one that has concerned me because of my feeling that I have a constitutional responsibility to defend the Office of the Presidency from any encroachments on confidentiality which might affect future Presidents in their abilities to conduct the kind of conversations and discussions they need to conduct to carry on the responsibilities of this Office. And, of course, the special prosecutor felt that he needed the tapes for the purpose of his prosecution.

That was why, working with the Attorney General, we worked out what we thought was an acceptable compromise, one in which Judge Stennis, now Senator Stennis, would hear the tapes and would provide a complete and full disclosure, not only to Judge Sirica, but also to the Senate Committee.

Attorney General Richardson approved of this proposition. Senator Baker, Senator Ervin approved of the proposition. Mr. Cox was the only one that rejected it.

Under the circumstances, when he rejected it and indicated that despite the approval of the Attorney General, of course, of the President, and of the two major Senators on the Ervin Committee, when he rejected the proposal, I had no choice but to dismiss him.

Under those circumstances, Mr. Richardson, Mr. Ruckelshaus felt that because of the nature of their confirmation that their commitment to Mr. Cox had to take precedence over any commitment they might have to carry out an order from the President.

Under those circumstances, I accepted with regret the resignations of two fine public servants.

Now we come to a new special prosecutor. We will cooperate with him, and I do not anticipate that we will come to the time when he would consider it necessary to take the President to court. I think our cooperation will be adequate.

Q. This is perhaps another way of asking Frank's question, but if the special prosecutor considers that information contained in Presidential documents is needed to prosecute the Watergate case, will you give him the documents, beyond the nine tapes which you have already given him?

THE PRESIDENT. I have answered that question before. We will not provide Presidential documents to a special

prosecutor. We will provide, as we have in great numbers, all kinds of documents from the White House, but if it is a document involving a conversation with the President, I would have to stand on the principle of confidentiality. However, information that is needed from such documents would be provided. That is what we have been trying to do.

Q. Mr. President, you know in the Congress there is a great deal of suspicion over any arrangement which will permit the executive branch to investigate itself or which will establish a special prosecutor which you may fire again. And 53 Senators, a majority, have now cosponsored a resolution which would permit Judge Sirica to establish and name an independent prosecutor, separate and apart from the White House and the executive branch. Do you believe this arrangement would be constitutional, and would you go along with it?

THE PRESIDENT. Well, I would suggest that the action that we are going to take, appointing a special prosecutor, would be satisfactory to the Congress, and that they would not proceed with that particular matter.

Mr. Rather [Dan Rather, CBS News].

QUESTIONS OF IMPEACHMENT OR RESIGNATION

Q. Mr. President, I wonder if you could share with us your thoughts, tell us what goes through your mind when you hear people, people who love this country, and people who believe in you, say reluctantly that perhaps you should resign or be impeached.

THE PRESIDENT. Well, I am glad we don't take the vote of this room, let me say. And I understand the feelings of people with regard to impeachment and resignation. As a matter of fact, Mr. Rather, you may remember that when I made the rather difficult decision—I thought the most difficult decision of my first term—on December 18, the bombing by B-52's of North Vietnam—that exactly the same words were used on the networks, I don't mean by you, but they were quoted on the networks—that were used now: tyrant, dictator, he has lost his senses, he should resign, he should be impeached.

But I stuck it out, and as a result of that, we not only got our prisoners of war home, as I have often said, on their feet rather than on their knees, but we brought peace to Vietnam, something we haven't had and didn't for over 12 years.

It was a hard decision, and it was one that many of my friends in the press who had consistently supported me on the war up to that time disagreed with. Now, in this instance I realize there are people who feel that the actions that I have taken with regard to the dismissal of Mr. Cox are grounds for impeachment.

I would respectfully suggest that even Mr. Cox and Mr. Richardson have agreed that the President had the right, constitutional right, to dismiss anybody in the Federal Government, and second, I should also point out that as

68. On October 30, 1973 Buzhardt informed Judge Sirica that the subpoenaed recordings of the June 20, 1972 telephone conversation between the President and John Mitchell and the April 15, 1973 meeting between the President and Dean had never been made.

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68.1 Judge Sirica statement, October 31, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 2.....	836

P R O C E E D I N G S

THE COURT: Gentlemen, you will recall we met yesterday to discuss procedures for the delivery and examination of the materials subpoenaed from the President. We reached agreement on several matters and will meet again on Friday to map out a schedule.

It was at yesterday's session, however, that the Court first learned that two of the subpoenaed items do not exist, namely, the tape of the telephone conversation between the President and John Mitchell on June 20, 1972, and the tape of the April 15, 1973 meeting involving the President and John W. Dean, III.

Mr. Buzhardt informed the Court and Justice Department counsel present that the recordings of these conversations had never been made. The Court, with the full agreement of Mr. Buzhardt, Mr. Ruth and Mr. Lacovara, felt that these facts and the circumstances giving rise to them should be made a matter of public record as soon as possible. For that reason, this proceeding has been scheduled. I will hear first from counsel for the President, Mr. Buzhardt.

MR. BUZHARDT: Thank you, Your Honor.

I would like to give a few facts in summary before we put on a witness.

First, the telephone call from the President, or between the President and Mr. Mitchell made on June 20th according to the log, between 6:08 and 6:12 p.m. was apparently made from one of

69. On October 31, 1973 Leon Jaworski, who had been selected to be Special Prosecutor, met with General Haig. Jaworski has testified that he discussed with Haig the conditions of his acceptance of the job of Special Prosecutor. Jaworski has testified that Haig went into the President's office and that when he returned he told Jaworski that the President understood Jaworski's position and agreed to it. Jaworski understood that he had the right to proceed against anyone, including the President.

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69.1 Leon Jaworski testimony, SJC, 2 Special Prosecutor
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And then I returned to Waco, Tex., where I practiced law primarily in the criminal field until 1929, when I had an offer to come to Houston. And I then practiced with a trial lawyer for some 2 years, until I had an offer to come with my present firm, which was then a very small firm. And I have been with that firm throughout the period of time except for 3½ years during the war.

I was in the Judge Advocate General Department during the war.

Following the war, of course, I returned to the law firm.

Primarily, up until the last few years, at least, my work was in the trial field.

The CHAIRMAN. Is that in all phases, or was it primarily in criminal law?

Mr. JAWORSKI. No; actually I was in charge of the general litigation section of our law firm. And there were no criminal cases accepted by us generally. During the war I should say I did prosecute. I was used by the U.S. Government in the cases that were considered to be of some importance, I guess. And I was directed by the Secretary of War through the Judge Advocate General to handle cases in different parts of the country as trial judge advocate, which is, as you know, the prosecuting officer, until I went overseas, and there I was placed in charge of the American Army's war crime trial section—and as such again I was the principal prosecutor.

Since then, I have had some criminal cases. I have represented indigent clients in some cases as recently as 3 or 4 years ago—there also were some cases in which I was employed including a perjury case in the Federal court in Saint Louis where I represented a well known attorney.

The CHAIRMAN. Were you employed by the White House, by Secretary Richardson? Who employed you?

Mr. JAWORSKI. Mr. Chairman, the call originally came from General Haig. He called me at my office in Houston.

And I told General Haig that I did not think there was any purpose in my coming to Washington to pursue the matter. He had suggested that I at least come and discuss it with him. And I told him that I had been approached, I imagine, some 2 or 3 weeks before Mr. Cox was employed, and the matter had been discussed with me by a gentleman who identified himself as the general counsel of then Secretary Elliot Richardson, a gentleman by the name of Hastings, I believe.

That had been a rather lengthy discussion over the telephone. And I had thought that the framework within which I was to operate was not one that gave me the independence that I wanted, that I thought I should have, that I thought was necessary in order to pursue the endeavor. And accordingly, I indicated no interest in the matter. And I did discuss with him others that might be interested, but cautioned him that I thought that the caliber of individual that was obtained would have direct relationship to the independence that was given to the Special Prosecutor.

General Haig told me that he thought that I could proceed on a different basis. And I mentioned to him—and I am trying to mention all of the highlights—that I felt unless there was such an independence as really reached the maximum within the President's power to give in connection with the appointment, that I first felt that I should not accept, and second, that I did not think it would be acceptable to the American people.

Whereupon General Haig suggested to me that the least I could do was come to Washington and discuss the matter with him.

I finally agreed to do this. And when I came to Washington I first met with General Haig for probably an hour or an hour and a half, during which time this matter was discussed in detail. And as a result of that discussion, there eventuated the arrangement that we have mentioned.

General Haig assured me that he would go and talk with the President, place the matter before him. And he came back and told me after a while, after maybe a lapse of 30 minutes or so, that it had been done, and that the President had agreed.

The CHAIRMAN. You are absolutely free to prosecute anyone; is that correct?

Mr. JAWORSKI. That is correct. And that is my intention.

The CHAIRMAN. And that includes the President of the United States?

Mr. JAWORSKI. It includes the President of the United States.

The CHAIRMAN. And you are proceeding that way?

Mr. JAWORSKI. I am proceeding that way.

If I may say, we undertook to pick up where the matter had been left off. And I have worked with the staff in all areas of investigation, on all matters that have been under consideration prior to the time that I arrived. And we are continuing in each of these fields of investigation, intending to bring it to a full conclusion, and to present to the grand jury such evidence as we think should be considered by it for the purposes of the indictments.

The CHAIRMAN. Senator McClellan.

Senator McCLELLAN. Mr. Jaworski, I was intrigued by your opening statement with respect to your having been licensed to practice law, after having your civil disability removed when you were 19 years old. I had a comparable experience. As you stated, at that time it didn't require as much in Arkansas to get a license to practice law. Maybe I wouldn't have been so fortunate if it had.

Mr. JAWORSKI. Neither would I, Senator McClellan.

Senator McCLELLAN. Anyway, you have since then had a very distinguished career in the profession. And you stand high as a member of the bar. In fact, you have a national reputation as an able attorney, and have had the honor of serving as president of the American Bar Association, an honor, I am sure, that any lawyer would cherish.

Mr. JAWORSKI. Thank you, sir.

Senator McCLELLAN. So I congratulate you at this point, because I think your present task is one of the most difficult assignments that any lawyer could have, with all of the problems that are associated with it. And I could only say that I wish you the same degree and measure of success in this undertaking and responsibility that has attended you in the practice of your profession.

Mr. JAWORSKI. Thank you, sir.

Senator McCLELLAN. How long have you been in the office?

Mr. JAWORSKI. I took my oath, Senator McClellan, on November 5, and we didn't lose any time. I held a meeting with the staff the same day. I mean the entire staff, all of the employees. And then I proceeded to visit with each of the task forces in detail as to what each was doing. And since that time, of course, I have had to go back with some of the task forces for the consideration of individual situations

the proof that was available to us that violations of the law had been committed, that I expected to present to the grand jury such information as related to those violations.

As to the national security phase of it, they said to me that if they believe that there was a security problem in anything I requested, they would let me listen to the tape, or whatever the matter might be, or see the document, and inform myself so as to be in a position to pass on it.

I told them—

Senator McCLELLAN. In other words, there would be no summary objection. There would be a discussion with you to enlighten you as to the reason they felt it might interfere?

Mr. JAWORSKI. Including listening to the tapes myself.

Senator McCLELLAN. And the tapes that had been in controversy?

Mr. JAWORSKI. Any that had been in controversy that might relate to this question of national security.

Senator McCLELLAN. And you had been assured of the right to listen to the tapes that have been discussed and have been at issue in the course of this Special Prosecutor duty?

Mr. JAWORSKI. I also asked for the right to designate someone in the event I could not do it myself.

Senator McCLELLAN. Designate someone from your staff?

Mr. JAWORSKI. That is correct, sir.

Senator McCLELLAN. Has that also been agreed to?

Mr. JAWORSKI. Yes, sir.

Senator McCLELLAN. Do you have that assurance?

Mr. JAWORSKI. Yes.

Senator McCLELLAN. May I ask you now, do you feel that with your understanding with the White House that you do have the right, irrespective of the legal issues that may be involved—that you have an understanding with them that gives you the right to go to court if you determine that they have documents you want or materials that you feel are essential and necessary in the performance of your duties, and in conducting a thorough investigation and following up with prosecution thereon, you have the right to go to court to raise the issue against the President and against any of his staff with respect to such documents or materials and to contest the question of privilege.

Mr. JAWORSKI. I have been assured that right. And I intend to exercise it if necessary.

Senator McCLELLAN. Are you satisfied that that assurance has been given to you in good faith, and are you relying upon it in order to enable you to carry out your functions?

Mr. JAWORSKI. Yes, sir.

Senator McClellan, it was that assurance that caused me to agree to come. But for the assurance and my believing that it was made in good faith, I would not have come.

Senator McCLELLAN. All right, then, if I understand you correctly, you are under no inhibition, or no inhibition has been imposed upon you as a condition for your appointment that would restrain you in the full performance of your duties, according to your conscience and the dictates of your judgment?

Mr. JAWORSKI. There is none that I am aware of.

Senator McCLELLAN. Do you anticipate as far as you have gone and the experience you have had thus far, do you anticipate any problem

ment, leads me to conclude that I would have the greatest confidence in the duties that you will perform, and the fashion in which you will comply with the dictates of your office.

Mr. JAWORSKI. Thank you, sir.

Senator HRUSKA. Mr. Jaworski, who was it that actually appointed you, technically made the appointment? I suspect you talked to General Haig, and it was reported that currently through General Haig the President agreed. And my question is, who is it that actually signed the paper that appointed you?

Mr. JAWORSKI. I should have pointed out that there were meetings, with the Acting Attorney General, with Mr. Bork, immediately following my discussions with General Haig, the same day before the appointment was made. And I talked with Mr. Bork at some length. And I also talked with the Attorney General designate, Senator Saxbe. So that both of them would have a full understanding of what the agreement was that had been reached between General Haig and me and in which General Haig had been confirmed by the President, and the President had agreed to it.

Senator HRUSKA. And do you feel that they are part of the group by implication or by express statement to which Senator McClellan referred as being in possession of the basis for your accepting the appointment and the terms and conditions in the mandate and all of the other details to which you refer?

Mr. JAWORSKI. They were discussed in detail in their presence and General Haig's presence, and fully understood by them and agreed to by each of them.

Senator HRUSKA. And where did the oath taking take place?

Mr. JAWORSKI. Well, sir, I went back home. The announcement was not made until the next day. And I returned home; which must have been on Thursday, probably, and then came back and pulled stakes somewhat in a hurry, and I was back by Monday morning and took the oath then promptly.

Senator HRUSKA. In the Attorney General's office?

Mr. JAWORSKI. I took the oath at the courthouse where the U.S. Court of Customs sits.

Senator HRUSKA. Had you during this interim met with the President?

Mr. JAWORSKI. I had not met with the President.

I should say that the offer was made that if I wanted to I could meet with him the day that I was there, and it was made again the other evening when I was there to discuss matters that I had alluded to earlier. And I have not talked to the President. I think that one reason I didn't is that at the time I felt that perhaps it might be better if I let the matter stand on the basis of discussions that were had. I was satisfied with them. And I think, although it wasn't said so, that perhaps the President may have felt the same way.

Senator HRUSKA. Mr. Jaworski, you are engaged in an enterprise which is inevitably and inherently involved in political considerations that cannot be escaped. You are no novice in that field—aren't you a dues paying member of one of the major political parties of this Nation?

Mr. JAWORSKI. No.

Now, this would be a tremendously large list. The list that I furnished Mr. Bork were the retainers.

Senator BAYH. But if you were confronted with an instance where one of these clients did appear on the horizon you would have no reluctance—

Mr. JAWORSKI. Not at all, sir. And I did, Senator—I don't know whether you were here at the time I mentioned this—I just didn't take a leave of absence. I withdrew from this law firm completely, just for the very purpose of avoiding any possible thought of impropriety.

Senator BAYH. I appreciate the fact that you did that. I ask the question only because there are going to be some people to whom, if this would arise—and I hope it won't—the fact that at one time you did represent them, although you no longer do, would be a subject that some people might raise about your objectivity. I appreciate your bringing that out in your answer.

Let me ask you, you have had no conversations directly with the President relative to your mandate of independence?

Mr. JAWORSKI. That is correct.

I did not at the time that I came up to discuss the matter before I agreed, although the offer of seeing him was made to me, and, I did not choose to talk with him.

Senator BAYH. You have not seen him at all?

Mr. JAWORSKI. I have not seen him at all.

Senator BAYH. I was watching with a great deal of interest, and I am sure you were, that October 26 news conference on the Friday following the weekend that caused so much furor, and brought Senator Tunney and me back from London, and everybody was scurrying to find out what we could do to try to shore up confidence in the system. I listened with a great deal of interest as the President suggested he was going to have a Special Prosecutor, which seemed to me to be filled with the unfortunate possibilities that we just experienced. First of all, let me remind you of what the President said, and then ask you if you could explore this a little bit more in detail.

The President said, "I would anticipate that that should not be necessary," referring to differences with the Special Prosecutor.

I would believe that as we look at the events which led to the dismissal of Mr. Cox we find that these are matters that can be worked out and should be worked out in cooperation and not by having a suit filed by a Special Prosecutor against the President of the United States.

Now, did you specifically ask General Haig about those comments? I think the President went on further, either then or later, and said that he would not turn over files to the Special Prosecutor.

Mr. JAWORSKI. We are going to be in a lawsuit if that is the case, sir. Because the two or three terms that made the greatest impression on me in the conversation that I had with General Haig, which he told me he repeated expressly to the President, included the statement that I had the right to sue the President if I decided it was necessary to do so. And I said I wouldn't touch this at all, I wouldn't consider it for a moment if I didn't have every right of legal process open to me.

And he said, "There is not the slightest question about it." And when he came back after talking with the President, he again repeated that and said that he had mentioned that to the President, and the

President had understood it and agreed to it, and confirmed the arrangement.

Now, the same thing precisely, Senator Bayh, was also mentioned in the presence of Mr. Bork and in the presence of the Attorney General designate, Senator Saxbe, when I met with them, which followed my talk with General Haig.

So I say this, that that is not a part of my agreement, sir, and I don't feel bound by anything that I did not hear, including the prepared statement, but I have seen a copy of it since then.

Senator BAYH. I quoted it specifically.

Mr. JAWORSKI. I know that.

Senator BAYH. Let me ask you to put on my shoes for a moment.

If you were sitting here, and you had respect for Leon Jaworski and wanted him to be able to do the job, but were concerned that he not get in the same kind of situation that befell Archibald Cox, and you not get in the same kind of situation the agreement that General Haig described, and then you had listened to the President in the previous quotation, wouldn't you be a bit concerned about the direction in which we were heading?

Mr. JAWORSKI. Perhaps I should be. However, what made a greater impression on me from what I read, Senator Bayh, is when he said he couldn't fire me without the consensus of a group of these gentlemen who are going to be representing Congress.

Senator BAYH. Was there a definition of "consensus" in the conversation?

Mr. JAWORSKI. No, sir; there was not. But he has, I thought, defined it in his statement. He certainly made it very clear that he could not proceed to discharge me without the agreement of these gentlemen.

Senator BAYH. Did he say "agreement," or did he say "consensus?"

Mr. JAWORSKI. "Consensus" is what he said, I believe. I think I have it somewhere.

Senator BAYH. That is all right. I know what he said, that is what concerns me. But he also told Senator Scott, who came directly here and sat right over there to the left of our distinguished colleague from Nebraska, and made certain specific assurances of independence. Senator Scott referred them to us. And earlier the President said openly on television, long before this ever happened, that he would not do certain things.

I am not suggesting that he intended to do the things at the time he mentioned them. I don't think he did. I don't think he was really intentionally lying. I think he changed his mind. And I think he is being honest, I will give him the benefit of the doubt, in what he has told General Haig as related earlier. But as I see it, we still don't have protection against the President changing his mind. If he told Senator Scott, and thus the Judiciary Committee, that he wouldn't do certain things, and later did them, does that not mean that he can, after saying to you, through General Haig, that he is not going to act without a consensus of the group, that he could subsequently do that?

Mr. JAWORSKI. Senator Bayh, all that I could think of doing was to ask for the maximum of assurances that occurred to me that I could receive, sir. And that is what I did.

Senator BAYH. You are limited perhaps more than we are. What would happen if the Attorney General who is ultimately confirmed



70. On November 1, 1973 Acting Attorney General Bork announced that he had appointed Leon Jaworski Special Prosecutor. Bork stated that Jaworski had been promised the full cooperation of the executive branch in the pursuit of his investigations and that the President had given his personal assurance that he would not exercise his constitutional powers with respect to discharge or limit the independence of the Special Prosecutor without first consulting designated Members of Congress.

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Watergate Special Prosecutor

Remarks of Acting Attorney General Robert H. Bork Announcing His Appointment of Leon Jaworski. November 1, 1973

Ladies and gentlemen, in my capacity as Acting Attorney General, I am announcing today that I have appointed Leon Jaworski as Special Prosecutor for the investigation of the Watergate matter and related subjects.

Mr. Jaworski is a distinguished member of the Bar, and he has a long record of outstanding public service. He has extensive prosecutorial experience. Born and raised in Texas, he personally prosecuted the first major war crime trials in the European theater during World War II. He later served as Special Assistant to the Attorney General in the Kennedy and Johnson Administrations, and as adviser to President Johnson.

In 1971 and 1972, Mr. Jaworski was president of the American Bar Association. He is also a past president of the American College of Trial Lawyers. Today, he is a senior partner in a Houston law firm, a position which he is relinquishing, of course, as he takes on this new assignment.

As Special Prosecutor, Mr. Jaworski's jurisdiction will be defined in the same terms as those first established for his predecessor. He has been promised the full cooperation of the executive branch in the pursuit of his investigations. Should he disagree with a decision of the Administration with regard to the release of Presidential documents, there will be no restrictions placed on his freedom of action.

There is no expectation whatever that the President will ever have an occasion to exercise his constitutional right to discharge the Special Prosecutor or that it would ever be necessary in any way to limit the independence that he is being given. Should that expectation prove to be ill-founded, the President has given his personal assurance that he will not exercise his constitutional powers with regard to the Special Prosecutor without first consulting the majority and minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House and ascertaining that their consensus is in accord with his proposed action.

I want to point out that the decision to name Mr. Jaworski to this post is one I made personally. Senator Saxbe participated in the closing stages of the selection process and concurred in the result. The selection also has the approval of President Nixon.

I should conclude by saying that, as one who has committed his honor and his professional reputation to achieving justice in this case, I am totally satisfied with the process of selection, with the terms of the new charter, and most especially with the man who is going to be taking

on these new duties. I believe the public is being well served.

NOTE Mr. Bork spoke at 10:15 a.m. at a news conference in the Briefing Room at the White House. The White House press release also included the question-and-answer session following Mr. Bork's opening remarks.

For the President's remarks concerning the appointment, see page 1301 of this issue.

Imports of Butter and Butter Substitutes

Proclamation 4253. Dated October 31, 1973. Released November 1, 1973

PROCLAMATION AMENDING PART 3 OF THE APPENDIX TO THE TARIFF SCHEDULES OF THE UNITED STATES WITH RESPECT TO THE IMPORTATION OF AGRICULTURAL COMMODITIES

*By the President of the United States of America
a Proclamation*

WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), limitations have been imposed by Presidential proclamations on the quantities of certain dairy products which may be imported into the United States in any quota year; and

WHEREAS the import restrictions proclaimed pursuant to said section 22 are set forth in part 3 of the Appendix to the Tariff Schedules of the United States; and

WHEREAS the Secretary of Agriculture has reported to me that he believes that additional quantities of butter, butter substitutes containing butterfat and butter oil provided for in items 950.05 and 950.06 of part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) may be entered for a temporary period without rendering or tending to render ineffective, or materially interfering with, the price support program now conducted by the Department of Agriculture for milk or reducing substantially the amount of products processed in the United States from domestic milk; and

WHEREAS, under the authority of section 22, I have requested the United States Tariff Commission to make an investigation with respect to this matter; and

WHEREAS the Secretary of Agriculture has determined and reported to me that a condition exists with respect to such articles provided for in items 950.05 and 950.06 of the TSUS which requires emergency treatment and that the quantitative limitation imposed on such articles should be increased during the period ending December 31, 1973, without awaiting the recommendations of the United States Tariff Commission with respect to such action; and

NOVEMBER 1, 1973

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE
PRESS CONFERENCE
OF
ACTING ATTORNEY GENERAL ROBERT H. BORK
THE BRIEFING ROOM

10:15 A.M. EST

THE ACTING ATTORNEY GENERAL: Ladies and gentlemen, in my capacity as Acting Attorney General, I am announcing today that I have appointed Leon Jaworski as Special Prosecutor for the investigation of the Watergate matter and related subjects.

Mr. Jaworski is a distinguished member of the Bar and he has a long record of outstanding public service. He has extensive prosecutorial experience. Born and raised in Texas, he personally prosecuted the first major war crime trials in the European Theater during World War II. He later served as Special Assistant to the Attorney General in the Kennedy and Johnson Administrations, and as advisor to President Johnson.

In 1971 and 1972, Mr. Jaworski was president of the American Bar Association. He is also a past president of the American College of Trial Lawyers. Today, he is a senior partner in a Houston law firm, a position which he is relinquishing, of course, as he takes on this new assignment.

As Special Prosecutor, Mr. Jaworski's jurisdiction will be defined in the same terms as those first established for his predecessor. He has been promised the full cooperation of the Executive branch in the pursuit of his investigations. Should he disagree with a decision of the Administration with regard to the release of Presidential documents, there will be no restrictions placed on his freedom of action.

There is no expectation whatever that the President will ever have an occasion to exercise his constitutional right to discharge the Special Prosecutor or that it would ever be necessary in any way to limit the independence that he is being given. Should that expectation prove to be ill-founded, the President has given his personal assurance that he will not exercise his constitutional powers with regard to the Special Prosecutor without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

MORE

- 8 -

Q Was Mr. Jaworski active in the Democrats for Nixon Campaign in 1972 which Governor Connally ran down in Massachusetts?

THE ACTING ATTORNEY GENERAL: I have no idea. I know Mr. Jaworski is a Democrat, but I did not in any way try to figure out his political activities. I didn't think they were important.

Q Mr. Bork, you may have stated it generally, but so it is perfectly clear and specific, is it clearly understood by you and by Mr. Jaworski that he is free to go to court to press for additional tapes or Presidential papers if he deems it necessary?

THE ACTING ATTORNEY GENERAL: That is absolutely clear.

THE PRESS: Thank you, sir.

FILED
NOV 8 - 1973
JAMES E. DAVEY, Clerk

END

(AT 10:27 A.M. EST)

71. Buzhardt has testified that on November 5, 1973 Haig informed Buzhardt that a dictabelt of the President's recollections of his April 15, 1973 conversation with Dean could not be located. The President has stated that on the weekend of November 4 and 5, 1973, upon checking his personal diary file, he was unable to find the April 15 dictabelt.

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71.1 J. Fred Buzhardt testimony, November 12, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 1103-05.....	850
71.2 Alexander Haig testimony, December 6, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 2072-77.....	853
71.3 President Nixon statement, November 12, 1973, 9 Presidential Documents 1329-30.....	859

generally this was something he did from time to time?

A I don't think it is fair to surmise.

Q Now as a matter of fact there is no dictabelt conversation of the President's recollections of his meeting with Mr. Dean, isn't that so?

A Yes, that is correct, we have not been able to locate one. Either on that day he found contemporaneous notes he made from the meetings.

Q When did it come to your attention for the first time there was no dictabelt of the President's recollection, Mr. Buzhardt?

A I believe that was on November the 5th, last Monday a week ago.

Q Week ago Monday?

A Yes.

Q You had made a statement prior to that that dictabelt would be produced to this Court, had you not?

A No, I don't believe so.

Q Let me see if we can find out with more accuracy. That was my recollection.

Do you recall some statement from the White House Press Corps when the President was recently in San Clemente the President indicated he would make available the dictabelt of his recollections of the John Dean meeting of April 15th?

A No, I don't specifically recall the statement from

San Clemente to the press corps. It is possible one was made.

Q Do you know the basis for it?

A No.

Q Did you personally make any effort to find this dictabelt?

A I caused to be made a search beginning the latter part of the weekend preceding November the 5th, or possibly a little earlier than that in the week for all of the materials covered the the Court order, yes.

Q And specifically with respect to the dictabelt, what did you do?

A I asked that file searches be made to locate all memoranda, notes, dictabelts, or other documentary evidence which were related to the conversations which were covered by the Court order.

Q And who was supposed to collect those?

A Various people on the staff were looking for these memoranda.

Q Who were engaged in collecting these notes?

A As to the materials that would have been made by the President himself, my request was given to General Haig.

Q General Haig was to conduct the search of the President's files?

A No, I gave the request to General Haig on the assumption that he would relay it to the President.

1105

Q And the President would be searching his files personally?

A I do not know.

Q Who was it told you that the dictabelt was apparently not in existence?

A I believe it was General Haig on November the 5th.

Q Did you ask General Haig whether he had conducted the search or what kind of a search had been conducted?

A No, I did not.

Q Did you make some assumption as to what kind of search had been conducted and who had conducted it?

A Yes, I guess I am giving an assumption.

Q What assumption did you make?

A I assumed the President caused his own files to be searched. Whether he did it himself or whether he looked or his secretary or somebody else did, I frankly did not make an assumption.

Q Incidentally, so that the record is clear, at Page 219 of the record which were the proceedings on November 1st, I made a request in open Court as to whether the dictabelt of the President's recollection of April 15 would be furnished and you responded:

"I don't know, he has a lot of Dictaphone Belts. Whether this is made up or transcribed, I do not know. If it is there, we will furnish

Mr. Cox from Mr. Buzhardt. It is Exhibit 53 in evidence.

THE COURT: Very well.

(Mr. Ben-Veniste shows exhibit to witness and hands copy to the Court.)

THE WITNESS: I am familiar with this as a matter brought to my attention when it surfaced at the time the meeting of April 15 became a point of controversy. I was not familiar with it at the time it was prepared nor would I be associated with this kind of detail between the counsel and the Special Prosecutor.

BY MR. BEN-VENISTE:

Q You don't recall any conversation around June or thereafter about this matter, the matter of the April 15 dicta-belt?

A No, I don't. In fact, I don't know too much about that subject.

Q The first you learned of it was when you were at Kay Biscayne?

A That is the best of my recollection, that is when the counsel came to Florida to discuss that over the weekend.

Q That was Mr. Buzhardt?

A Mr. Buzhardt and Mr. Garment.

Q What was the substance of the conversation which you had that week?

A There was a concern on the part of the counsel that

2073

we provide to the Court all that could be provided to shed light on the meeting which was not recorded. That is my recollection.

Q Did they mention specifically the April 15 dictabolt?

A There was discussion that weekend about it. I was not a direct participant in it except in a general sense.

Q Did they show you Exhibit 53 at that time?

A I don't believe so, no.

Q Did Mr. Buzhardt ask you generally whether you could⁵ search the President's files in order to locate documentation which was called for in the subpoena?

A There was a search that weekend, looking for anything as I recall that would shed light on the contents of that discussion with Mr. Dean that was not recorded and that involved, I think, review of material before and meetings before and after that date.

As I recall, that is the same weekend there was a review made of the meeting on the 16th of April, two meetings with Mr. Dean which referred to the April 15 meeting with the President.

Q Was there anything else requested by Mr. Buzhardt at that time?

A There was discussion with the President that I had and which suggested that he might want to review his own diary recollections of that period.

Q Who was supposed to actually search -- well, was there

specific mention of this dictabelt, General?

A I don't have a precise recollection that I think is responsive to your problem. I don't search for dictabelts or documents.

Q Did you tell Mr. Buzhardt that you would be responsible for causing that search to be made?

A I may have told him that I would raise it with the President and I recall discussing it with the President that we were trying to ascertain from either his diary or any other possible source a means of shedding light on the contents of the discussion on the 15th of April with Mr. Dean.

Q Did you discuss with the President the causing of a search to be made of the President's files with respect to Mr. Buzhardt's inquiry?

A Some of this communication was between Mr. Buzhardt and the President, not between me. I do recall there was quite a search made by Miss Woods into the President's own files of his diary which would have been probably where the dictabelt would have been preserved. And I was aware on several occasions when I was in the President's office in Washington when Miss Woods came in with a piece of what she thought might be dictabelt material or diary material.

Q Do I understand you, General, are you saying on that weekend Miss Woods made a search of the President's files?

A No, it would probably have been right after that

weekend to the best of my memory when we returned to Washington.

Q Prior to that time did you have any conversation with the President as to his own recollection as to whether he had dictated his recollections of the April 15 meeting?

A No, I think Mr. Buzhardt was the point of contact on that issue at the time. What I have is sort of piecemeal in both observatory and otherwise.

Q The 3rd of November was a Saturday, the 4th of November was a Sunday.

Do you recall when thereafter if at all you made any report to Mr. Buzhardt as to the availability or ability to find the dictabelt in question?

A Whether it was that weekend or early that week, I am not sure, but I do know the President reviewed his diary envelope. As I recall, he found that instead of a belt that he had his personal notes. Now I know he conveyed that directly to Mr. Buzhardt, but I think I may have too.

Q Then you had a conversation with the President about where he looked for this dictabelt and what it was he found?

A I think he mentioned to me that Miss Woods had found the diary for that day and what was in it was the handwritten notes of the President on the meeting.

Q So as far as you know from any source the only person who looked for that dictabelt was Miss Woods?

A Miss Woods and the President. Perhaps Mr. Bull, I am

not sure.

Q Did the President tell you he had also looked for the dictabelt?

A No, I don't -- I couldn't imagine his doing so just in the sense of the routine that is normally followed.

Q My question was, do you know from any source anyone except Miss Woods looked for the dictabelt?

A No, I can't say that with assurance. I know I did not.

Q Would it refresh your recollection if I -- as to the date that you reported to Mr. Buzhardt, reading from Page 1105:

"Question: And the President would be searching his files personally?

"Answer: I do not know.

"Question: Who was it told you that the dictabelt was apparently not in existence?

"Answer: I believe it was General Haig on November the 5th.

"Question: Did you ask General Haig whether he had conducted the search or what kind of a search had been conducted?

"Answer: No, I did not."

MR. GARMENT: Would you read the next question and answer?

MR. BEN-VENISTE: I am only referring to the date, Mr. Garment, November 5th. You want to --

THE COURT: -- Just a minute, counsel. Direct yourselves to the Court.

MR. BEN-VENISTE: I suggest there is going to be redirect and if he wants more testimony --

THE COURT: -- I think that is the way to handle it.

MR. GARMENT: Your Honor, it is a small point.

THE COURT: I think I will let you bring it out on redirect. I think this is the way to conduct the examination. All right.

BY MR. BEN-VENISTE:

Q Does that help your recollection as to what the date was as to what Mr. Buzhardt referred to?

A It does, of course it does. I don't see it is any different than what I described.

Q I am not suggesting it is different, General. You could not put a date on it. Mr. Buzhardt said it was the 5th which was Monday, the day after you returned from Key Biscayne.

A I wouldn't challenge that, I am sure that is accurate.

Q So as far as you know, it was a one-day search which resulted in the negative on whether the dictabelt was in existence?

A Yes, although I can't say that with certainty, either.

Q After the President reported to you and you reported to the President that there was no dictabelt in the file, did you have a conversation with the President as to whether he

Administration of Richard Nixon

PRESIDENTIAL DOCUMENTS

Week Ending Saturday, November 17, 1973

Presidential Tapes and Documents

*Statement by the President Outlining Procedures
To Provide Information Related to the Watergate
Investigation to the Chief Judge of the United States
District Court for the District of Columbia.
November 12, 1973*

As a consequence of the public disclosure, 2 weeks ago, that two conversations of the President were not recorded on the White House recording system, doubts have arisen about just what happened to these conversations and why they were not recorded. The purpose of this statement is to help dispel those doubts and to spell out certain steps I will take to offer information to the court that will help determine the substance of all nine conversations subpoenaed by the court.

First, there are no missing tapes. There are two conversations requested by the courts which were not recorded. The first is a 4-minute conversation with the former Attorney General, John Mitchell, on June 20, 1972. The second is a meeting of 55 minutes with John Dean, late in the evening of Sunday, April 15, 1973.

There is no question in my mind but that the open-court hearing, now being conducted, will demonstrate to the court's satisfaction the truth of our statements that these two conversations were never recorded. In fact there is no affirmative evidence to the contrary. I believe that when the court concludes its evaluation of the testimony and documentary evidence, public doubt on this issue will be completely and satisfactorily removed.

In the meantime, I believe it important to make a statement about this proceeding so that misconceptions about this matter do not persist, simply because certain basic facts are not presented to the American public.

First, the Senate Select Committee did not subpoena the substance of the two unrecorded conversations. That

material was requested only by the Special Prosecutor, and the court, who believed the substance of nine presidential conversations was necessary for completion of the Watergate investigation.

We are complying fully with the Federal court decision. In seven of nine instances, the actual recording of the conversation is being submitted; this includes five conversations in which John Dean participated—September 15, 1972, March 13, 1973, two on March 21, 1973, one on March 22, 1973. For all nine conversations covered by the subpoena, such contemporaneous notes and memoranda as were made of the conversations are being provided in accordance with the court order.

Before discussing these matters, the issue of when and why the recorded conversations were listened to by me, and by others on my behalf, should be placed in chronological perspective.

On June 4, 1973, I listened to the tape recordings of a number of conversations I had with John Dean in order to refresh my memory of those discussions. All of the conversations to which I listened that day had taken place prior to March 21, 1973. My purpose in reviewing the recordings of my conversations with Mr. Dean was to confirm my recollection that he had not reported certain facts to me prior to March 21, 1973. In late April 1973, I asked H. R. Haldeman to listen and report on the conversation of March 21, 1973, in which he had been present for a substantial portion of time. My primary purpose in having Mr. Haldeman listen to this tape was to confirm my recollection that March 21, 1973, was the date on which John Dean had first reported certain facts to me.

There had been rumors and reports to the contrary—one of them suggesting that John Dean and I had met 30 or 40 times to discuss Watergate—and I wanted to refresh my recollection as to what was the precise and entire truth.

On September 29, 1973, I began a review of the tape recordings subpoenaed by the Special Prosecutor for the grand jury and by the Senate Select Committee. The reason was it had been my deliberate intention to litigate

the matter up to Supreme Court, if necessary, to protect the right of confidentiality and the related principle of separation of powers. By late September, however, I had come to the conclusion that the national interest would be better served by a reasonable compromise.

Thus, in late September, I began to consider various approaches which led to what has come to be known as the "Stennis Compromise"—turning over to both the Senate committee and the court the full substance of the relevant recorded conversations, leaving the verification of the precision and accuracy of that substance to Senator Stennis. That compromise offer, accepted by the Senate Committee Chairman and Vice Chairman, proved unacceptable to the Special Prosecutor.

It was during this process that I first became aware of the possibility that two of the 10 conversations in question had not been recorded.

I proceeded with a review of the eight recorded conversations and subsequently ordered a further search for recordings of the two conversations in question and an investigation into the circumstances which caused the conversations not to be recorded. The search and investigation were not finally completed until October 27.

One of the conversations for which no recording could be found was a 4-minute telephone call I made to John Mitchell on the evening of June 20, 1972. The only telephone calls which were recorded in the residence of the White House were those made in the Lincoln Sitting Room which I use as an office. Telephone conversations in the family quarters have never been recorded during this Administration. The telephone call with John Mitchell was one that I made on the telephone in the family quarters just before going in to dinner, and consequently it was not recorded.

My conversation with John Dean on Sunday evening, April 15, 1973, was not recorded because the tape on the recording machine for my Executive Office Building office was used up and ran out earlier in the day. The tape which was on the operating recorder on Sunday, April 15, 1973, contains recordings of the conversations in my Executive Office Building office on Saturday, April 14, 1973. It also contains a portion of the first conversation I had in that office on Sunday, April 15, 1973, which was with Attorney General Kleindienst. During that conversation the tape ran out. Normally, I see very few people in my Executive Office Building office on the weekends. However, on the weekend of April 14 and 15, the activity in my Executive Office Building office was unusual and unanticipated. Certain reports made to me by my staff early in the morning of April 14, 1973, led me to have lengthy discussions with staff members during the day in my office in the Executive Office Building. In addition, international developments required a lengthy meeting with my Assistant for National Security Affairs late that morning.

On Sunday, April 15, 1973, I began another series of meetings in my Executive Office Building office at about 1 p.m. The first meeting was with Attorney General Kleindienst. Thereafter the meetings continued until late

in the evening with the exception of a break of about 2 hours for dinner. I did not meet with John Dean until approximately 9 o'clock that evening. Since the tape on the recorder for my Executive Office Building office had run out during my afternoon meeting with Attorney General Kleindienst, the Dean meeting was not recorded.

It should be pointed out that the court order calls for evidentiary materials such as notes and memoranda in addition to recordings of specified conversations. The court order spells out a detailed procedure for turning materials over for Judge Sirica's private review. In recent days, in an effort to locate materials for the court, a diligent search has been made for materials that might shed further light on the substance of the conversations in question, including the unrecorded conversations with John Mitchell on June 20, 1972, and with John Dean, on the evening of April 15, 1973.

Since I have been in office, I have maintained a personal diary file which consists of notes which I have personally taken during meetings and of dictation belts on which I record recollections. The dictation belts and notes are placed in my personal diary file by my secretary. They are sealed under specific instructions that they not be transcribed.

In the course of searching my personal diary files, I have located a dictation belt that I dictated at 8:30 p.m. on June 20, 1972, on which, among other activities of the day, I referred to a telephone call with John Mitchell. The portion of the belt relating to the conversation with John Mitchell will be submitted to the court.

We have also located the dictation belt of my recollections of the conversations in question for March 21, 1973, and the relevant portions of these recollections together with the actual recordings of the conversations, of course, will also be submitted to the court in compliance with its order.

Over the weekend of November 4 and 5, 1973, upon checking my personal diary file for April 15, 1973, to locate information to be produced in accordance with the court's order, I found that my file for that day consists of personal notes of the conversation held with John Dean the evening of April 15, 1973, but not a dictation belt. My original handwritten notes, made during my meeting with John Dean on the evening of April 15, 1973, will be submitted to the court.

On June 11, 1973, the Special Prosecutor requested a tape of a conversation I had with John Dean on April 15, 1973 (which I had previously offered to let Assistant Attorney General Petersen hear).

As has been pointed out, my personal diary file consists of notes of conversations and dictation belts of recollections, and I believed in June that I had dictated my recollections of April 15, 1973, of conversations which occurred on that day. The response to the Special Prosecutor made on June 16, 1973, referred to such a dictation belt. At that time, however, I did not review my file to confirm that it contained the belt.

72. On November 19, 1973 Acting Attorney General Bork filed an amendment to the Special Prosecutor's charter. The amendment provided that the jurisdiction of the Special Prosecutor would not be limited without the President first consulting with the Majority and Minority Leaders in the Congress and the Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus was in accord with his proposed action. On November 21, 1973 Bork wrote to Jaworski explaining that the amendment was to make clear that the assurances concerning Congressional consultation applied to all aspects of the Special Prosecutor's independence.

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72.1 Department of Justice Order No. 554-73, November 19, 1973, 38 Fed. Reg. 32805, and letter from Robert Bork to Leon Jaworski, November 21, 1973.....	862
72.2 Robert Bork testimony, SJC, Saxbe Nomination Hearings, 85-86.....	865

Department of Justice Order No. 554-73 (Nov. 19, 1973)
38 Fed. Reg. 32,805, amending 28 C.F.R. Appendix to
Subpart G-1, provides --



Office of the Attorney General
Washington, D. C. 20530

TITLE 28 -- JUDICIAL ADMINISTRATION

CHAPTER I -- DEPARTMENT OF JUSTICE

PART O -- ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart G - 1 -- Office of Watergate Special Prosecution Force

Order No. 554-73

AMENDING THE REGULATIONS ESTABLISHING THE OFFICE OF
WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510
and 5 U.S.C. 301, the last sentence of the fourth paragraph of the
Appendix to Subpart G-1 is amended to read as follows:

In accordance with assurances given by the President to the
Attorney General that the President will not exercise his
Constitutional powers to effect the discharge of the Special
Prosecutor or to limit the independence that he is hereby given,
(1) the Special Prosecutor will not be removed from his duties
except for extraordinary improprieties on his part and without
the President's first consulting the Majority and the Minority
Leaders and Chairmen and ranking Minority Members of the
Judiciary Committees of the Senate and House of Representatives

and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action.

Date: NOV 19 1973

Robert H. Bork
Acting Attorney General

5. The letter from the Acting Attorney General to the Special Prosecutor on November 21, 1973, stating the intention of Department of Justice Order No. 554-73, as follows:



Office of the Solicitor General
Washington, D.C. 20530

November 21, 1973

Leon Jaworski, Esq.
Special Prosecutor
Watergate Special Prosecution Force
1425 K Street, N.W.
Washington, D.C. 20005

Dear Mr. Jaworski:

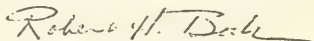
You have informed me that the amendment to your charter of November 19, 1973 has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973 was intended to be, and is, a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Sincerely,



Robert H. Bork
Acting Attorney General

Do you not think it would be helpful if we had, from the President, assurances directed to the committee that he does indeed accept the guidelines and commits himself in support of the guidelines?

Mr. BORK. Well, Senator, that might be helpful. I have the President's personal assurances on that. I do not think, if the committee wishes to ask the President, I do not see anything improper in that, but I do have the President's personal assurances and I am not at all worried about the issue.

Senator HART. Well, you have that assurance and are reassured.

How about our getting the assurance so that we could be reassured?

Mr. BORK. I think the committee, if it desires such assurance, might well ask the President for it.

Senator HART. Well, if we ask him, what would you counsel him?

Mr. BORK. What would I counsel him? I suppose I would counsel him to give it, but I would like to clarify, if I may, this question of the amendment to the charter.

Senator HART. Yes, that we want, Mr. Bork.

Mr. BORK. Which I think is an issue much misunderstood.

The amendment to the charter was designed to put back in what the President had originally stated, and let me just run through the series of events.

I discussed with the President and with Mr. Garment what the President's personal assurances would be, and at the press briefing on November 1, 1973, at the White House, I read the following statement. I will not read the entire statement. I will merely read the paragraph that is relevant.

And after stating that there would be no restrictions placed upon Mr. Jaworski's freedom of action, I said—and this is a quotation, “there is no expectation whatever that the President will ever have an occasion to exercise his constitutional right to discharge the Special Prosecutor, or that it would ever be necessary in any way to limit the independence that he is being given. Should that expectation prove to be ill-founded the President has given his personal assurance that he will not exercise his constitutional powers with regard to the Special Prosecutor without first consulting the majority and minority leaders, and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.” That is the end of the quotation.

Now, you will see that in that statement are the President's personal assurances to me, and through me to the Nation. The limitation, the President's promise to consult and obtain a consensus, applied both to the discharge of the Special Prosecutor and to any limitation imposed upon his independence.

I came back from that meeting and spoke to one of the staff members at the Justice Department and asked him to reissue the charter given to Mr. Cox, with the sole exception that I wanted this paragraph worked into the charter, with the sole exception that I wanted this paragraph of the President's assurance worked into the charter. I did not notice when it came back to me for signature that the wording had gotten changed, and the wording in the charter that referred to these assurances read “in accordance with assurances given by the

President to the Attorney General that the President will not exercise his constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given. The Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the majority" and so forth, and it goes through the rest of that language. But what happened there, as you see, that paragraph refers first to discharge and to limitation of independence, but then in the next clause, it says he will not be removed except with consultation and consensus of these House and Senate leaders, so that the original assurance, part of the original assurance got dropped out in the translation from what I said at the press briefing to the charter.

I did not realize that. I signed it. I came up here and testified, and I think it was you, Senator Hart, who asked me if that safeguard of consultation and consensus applied both to discharge and to limitations of independence.

Senator HART. I did.

Mr. BORK. I answered yes, they do to both. The following day or so I received a letter from Senator Kennedy asking me the same question. I asked another staff member to help me in drafting a response. He came back and said, you know, I have just read the charter, and that safeguard of consultation, of consensus, applies only to discharge.

At this point I became apprehensive that I would be accused of having dropped out part of the safeguard, so I had an amendment drafted which put back in what I had originally said, that the consultation and consensus safeguard applied both to the discharge and to any limitation on jurisdiction. So nothing was eroded. The amendment put the position right back where it was when the President first gave his assurances, and I announced those assurances.

This has been a matter of some debate. The Washington Post printed an editorial—well, anyway, first, Mr. Jaworski told me—I told, by the way, Mr. Jaworski I was going to make that amendment before I made it. I called him up and he said it was all right with him. I then issued it.

In order to allay—he told me later that the press was making inquiries about whether this was not some kind of an erosion of his freedom, and he and I agreed I should write him a letter saying it was not an erosion of his freedom. So I wrote the letter of I think it was November 21, which I understand you have gone over yesterday.

Subsequently the Washington Post printed an editorial in which it said it was—this was a move to erode Mr. Jaworski's freedom, and I wrote them a letter which they printed, in which I stated—and I would like to put this before you, Mr. Hart, because I think it states it as well as I can state it. I will read part of the letter, quote:

A check of my original announcement of Mr. Jaworski's appointment will show that the President's assurance that he would consult with and require the consensus of eight congressional leaders applied both to the discharge of the Special Prosecutor and to any limitations on his independence. The charter which was subsequently issued, inadvertently referred only to discharge. My later amendment restored the consensus safeguard for independence. I made the amendment when a question by Senator Kennedy led to a discovery of the drafting error, and ironically I made it precisely because I thought I might be accused of deliberately leaving out part of the original safeguard. I have not discussed this amendment or Mr. Jaworski's activities with anyone at the White House.

73. On November 21, 1973 Buzhardt informed Judge Sirica that the June 20, 1972 EOB tape contained an 18-1/4 minute erasure. On that same day, Judge Sirica appointed an advisory panel of experts nominated jointly by the President's Counsel and the Special Prosecutor to examine various tape recordings and to report on their findings.

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73.1 J. Fred Buzhardt testimony, January 18, 1974, <u>In re Grand Jury</u> , Misc. 47-73, 2490	868
73.2 <u>The EOB Tape of June 20, 1972</u> , Report on a Technical Investigation Conducted for the U.S. District Court for the District of Columbia by the Advisory Panel on White House tapes, May 31, 1974.....	869

Indistinct document retyped by
House Judiciary Committee staff

MR. RHYNE: Fine.

Mr. Buzhardt, on November 21, did you along with Mr. Garment and Mr. Jaworski appear before Judge Sirica and state to Judge Sirica that in your opinion it did not appear that this erasure of 18 and 1/4 minutes could have been accidental?

A Yes, based on the facts that we had at that time.

THE COURT: Let me ask you a question: Don't you have a transcript?

MR. RHYNE: Yes, I have it.

THE COURT: Read from the transcript.

MR. RHYNE: All right. I will quote, Mr. Buzhardt,

Page 2.

"Mr. Buzhardt: Judge, we have a problem.

In the process of preparing the analysis we have discovered and discussed this with the Prosecutor this morning, one of the tapes, the intelligence is not available for approximately 18 minutes. There is an obliteration of the intelligence for approximately 18 minutes. You can't hear the voices. There are two signals there, one overrides for approximately four minutes and 30 seconds and you get a different type of signal and runs through.

"Under the circumstances we know at this

Indistinct document retyped by
House Judiciary Committee staff

Advisory Panel
on White House Tapes
May 31, 1974

Judge John J. Sirica
United States District Court
for the District of Columbia
Washington, D.C.

Dear Judge Sirica:

We are pleased to submit herewith the final report on our technical investigation of a tape recorded in the Executive Office Building on June 20, 1972. This is the tape on which an eighteen and one-half minute section of buzz appears.

The report itself occupies the first fifty pages of this volume. The remaining pages contain appended material concerning our study, followed by a set of detailed Technical Notes on the scientific techniques we used and the test results we obtained.

Respectfully yours,

Richard H. Bolt
Richard H. Bolt

Franklin S. Cooper
Franklin S. Cooper

James L. Flanagan
James L. Flanagan

John G. McKnight
John G. McKnight

Thomas G. Stockham, Jr.
Thomas G. Stockham, Jr.

Mark R. Weiss
Mark R. Weiss

SUMMARY

A tape recording of conversations held on June 20, 1972 in the Executive Office Building contains a section lasting eighteen and one-half minutes during which buzz sounds but no discernible speech sounds are heard. This report describes work done to find out what caused the buzz section.

In November, 1973, Chief Judge John J. Sirica of the U. S. District Court for the District of Columbia appointed an Advisory Panel of persons nominated jointly by the White House and the Special Prosecution Force, and asked the Panel to study relevant aspects of the tape and the sounds recorded on it. In performing this task the Panel has made extensive tests on the tape itself, on electrical signals picked up from the tape, and on recording equipment that was used or might have been used in recording the speech and buzz sounds on the tape. Through analysis of the test results and simulation of alternative ways in which the buzz section might have been produced, the Panel has arrived at a single explanation that accounts for the buzz section observed on the Evidence Tape.

The Panel found no basis for doubting the authenticity of the speech recording. The recording appeared to be an original one made on a Sony 800B recorder, the type reportedly used in the Executive Office Building. The tape showed no signs of splicing, tampering, or copying. The buzz section was made directly on this tape, probably by the Uher 5000 recorder labeled Government Exhibit 60. The buzz sound probably originated in electrical noise on the electric power line that powered the recorder. Any speech sounds previously recorded on this section of the tape were erased in conjunction with the recording process, as is normal in recorders of this kind. The erasure is so strong as to make recovery of the original conversation virtually impossible.

The buzz section, which sounds much the same throughout, contains many "events" such as clicks, pops, changes in loudness, and gaps with no sound. The Panel traced most of these events to specific operations of electrical and mechanical elements of the recorder. This information together with data on the tape motions and recorder characteristics enabled the Panel to infer things that must have been done with the recorder to produce the events observed on the tape. No explanation of the buzz section based on malfunction of the recorder can account for the entire set of observed data and the patterns they form. The only completely plausible explanation found is one that requires keyboard operations of a normally-operating machine. Five or more sets of such operations are involved in the explanation.

This report draws no inferences about such questions as whether the erasure and buzz were made accidentally or intentionally, or when, or by what person or persons. The report does provide a solid basis in experimental fact for concluding that the erasure and the recording of buzz required several operations of the pushbuttons on the control keyboard of the Uher 5000 recorder.

PREFACE

This report concerns work undertaken to examine the authenticity and integrity of tape recordings made in the offices of the President of the United States of America.

In November 1973 Chief Judge John J. Sirica of the U. S. District Court for the District of Columbia appointed an Advisory Panel to undertake this work and specified their task in the following words:

"(a) By judgment entered on August 29, 1973, this Court directed production of various tape recordings and other materials covered by a grand jury subpoena duces tecum issued to President Richard M. Nixon, and this order was upheld by a judgment of the United States Court of Appeals for the District of Columbia Circuit entered on October 12, 1973;

(b) On October 23, 1973, counsel for the White House stated that there would be full compliance with the order of the Court.

(c) On October 30, 1973, counsel for the White House informed the Court that two subpoenaed conversations had not been recorded and on November 21, 1973, further informed the Court that a gap of approximately 18-minutes duration existed in a third subpoenaed conversation;

(d) The Court determined that it was in the interest of justice to conduct full inquiry into these developments and that it would materially aid the Court's resolution of this inquiry to secure the assistance of experts skilled in examination of such tape recordings;

(e) Counsel for the President and the Special Prosecutor as counsel for the grand jury agreed upon the selection and nomination of six technical experts to examine various tape recordings and to report their findings to the Court;

(f) The Court accepted the nominations of counsel for the respective parties and on November 21, 1973, appointed Richard H. Bolt, Franklin Cooper, James L. Flanagan, John G. (Jay) McKnight, Thomas G. Stockham, Jr., and Mark R. Weiss as an advisory panel of expert witnesses to assist the Court;"

[Excerpt from an Order
Relating to Expert Witnesses,
Misc. No. 47-73, December 20, 1973]

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The Advisory Panel was chosen to cover a range of technical capabilities relevant to the task of examining the tapes. The six members of the Advisory Panel met together first on Sunday, November 18, 1973, in the Executive Office Building and there attended a briefing session conducted by representatives of counsel for the President and the Special Prosecutor. Immediately thereafter the Panel undertook the preparation of a proposed plan of work and submitted it to the Court on November 21, 1973.

Shortly after the Panel was appointed and commenced its study of the tapes, the Court suggested that the tape recorded in the Executive Office Building on June 20, 1972, was of special interest and would deserve priority attention. In response, the Panel devoted most of its attention to this tape during the first months of its work.

On December 13, 1973, the Panel submitted an interim report on its work and its provisional conclusions about the source of the buzz that appeared on the tape of June 20th.

By January 10, 1974, the Panel had arrived at firm answers to the central questions about the tape of June 20, 1972. Because the Court wished to have this information at the earliest possible time, the Panel submitted a summary report on January 15, 1974, containing the principal conclusions together with brief indications of the nature of the evidence that led to the conclusions. Many added details concerning the Panel's investigation of this tape were reported in sessions of the Court on January 15 and 18, 1974.

The Panel then turned to the preparation of a full report of its tests and analyses concerning the tape of June 20, 1972. Concurrently, in accord with instructions from the Court, the Panel initiated a preliminary study of several other tapes.

After the Panel's conclusions were made public, several persons volunteered ideas and suggestions to the Court, or to one of the legal offices involved in this matter, or directly to members of the Panel. Some of these volunteered submissions described alternative interpretations that differed markedly from the Panel's conclusions. The Panel already had considered several alternatives and believed that its experimental results firmly supported the conclusions made public on January 15.

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Nonetheless, the Panel, in keeping with its responsibility to the Court and the public in this unusual undertaking decided to look carefully into every proffered suggestion that might at all contribute to a fuller understanding of what happened to the tape. The Panel took on this added work even though it would delay completion of the final report on the tape to June 1, 1974.

By mid-February the Panel had made intensive studies and tests of proposed alternatives, with results that confirmed the original conclusions. These conclusions and the data and considerations supporting them had been discussed from time to time with representatives of counsel for both parties. In late February and early March, at the request of counsel for the President and with the approval of the Court, this material was discussed also with technical advisors employed by counsel for the President. These various discussions led to further analysis of the origin of certain clicks already noted on the tape of June 20, 1972, and thereby to additional confirmation of one of the Panel's original conclusions.

Completion of these studies and the writing up of results occupied most of the Panel's efforts from March to early May, when we submitted a draft report to the Court. Subsequently we received comments on the draft and gave them careful consideration in preparing this final report.

Scope and Organization of this Report

This report pulls together the results of all our work on the tape recorded in the Executive Office Building on June 20, 1972. Although other tapes are not discussed in this document, the tests and methods of analysis described here are applicable also to our examination of other tapes.

Our study of authenticity and integrity pertains to the entire tape, which contains about six hours of material. However, our preliminary results led us to concentrate attention on a section of the tape containing 18.5 minutes of buzz and other sounds not found in the rest of the tape. Our conclusions relate mainly to the way in which this buzz section was produced.

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In this Report we document the conclusions we presented to the Court on January 15, 1974. This volume also contains a large amount of information not reported previously. The added information includes detailed descriptions of all the tests and analyses we have made, full compilations of resulting data, and reports on experiments we have performed to check certain alternative hypotheses regarding the origin of the buzz section.

The Report contains four chapters. The first one describes our general approach to the task: our use of scientific methods to make measurements and hypotheses leading to a simulation of the process that produced the buzz section. Chapter II describes in detail the main methods of measurement and analyses that we used. In Chapter III we show how the results of many tests combine to explain essentially all the "events" in the buzz section. The final chapter summarizes the data and reasoning by which we arrived at each of the seven main conclusions.

Following the Report, this volume contains appended material and several Technical Notes. These Notes, which actually make up the bulk of material in the volume, comprehensively document the tests, analyses, and data. The Technical Notes are addressed to persons who wish to study our results in scientific detail.

In the Report itself, we have minimized technical complexity and terminology in order to explain as simply as possible what we did and how we reached our conclusions. We hope that the interested person who is not a technical specialist will gain from this Report an accurate, interpretive understanding of our findings.

74. On November 26, 1973 Buzhardt submitted to Judge Sirica an analysis and an index of the materials subpoenaed by the Special Prosecutor on July 23, 1973. The document particularized claims of executive privilege. The President did not assert that any of the tapes contained national defense information.

74.1	Watergate Special Prosecution Force Memorandum in Response to Analysis, Index and Particularized Claims of Executive Privilege, November 29, 1973, <u>In re Grand Jury</u> , Misc. 47-73, 1, 4.....	Page 876
74.2	Order, December 19, 1973, <u>In re Grand Jury</u> , Misc. 47-73.....	878

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R.C.

IN RE GRAND JURY SUBPOENA)	
DUCES TECUM ISSUED TO)	
RICHARD M. NIXON, OR ANY)	
SUBORDINATE OFFICER, OF-	)	Misc. No. 47-73
FICIAL, OR EMPLOYEE WITH)	
CUSTODY OR CONTROL OF)	
CERTAIN DOCUMENTS OR OB-)	
JECTS)	

MEMORANDUM IN RESPONSE TO ANALYSIS,
INDEX AND PARTICULARIZED CLAIMS OF
EXECUTIVE PRIVILEGE FOR SUBPOENAED
MATERIALS

The Special Prosecutor, on behalf of the United States and the June 1972 Grand Jury, submits this memorandum in response to the Analysis, Index and Particularized Claims of Executive Privilege for Subpoenaed Materials filed by counsel for the President on November 26, 1973, pursuant to the opinion and mandate of the United States Court of Appeals in Nixon v. Sirica (D.C. Cir. No. 73-1962, decided October 12, 1973). It is our position that subpoenaed materials for which no particularized claim of executive privilege is asserted and are conceded to be relevant to the grand jury's investigations should be turned over forthwith to the Special Prosecutor for production to the grand jury. As to those subpoenaed materials which the President asserts should not be produced to the grand jury because they are irrelevant to the grand jury's investigation, the Court should examine them in camera to determine independently whether they are relevant, making the disputed portions available to the Special Prosecutor where it would be helpful to secure his assessment of possible relevancy. Any materials the Court concludes are relevant then should be

- the President, H. R. Haldeman,
John Ehrlichman and John Dean from
5:20 to 6:01 p.m. (Item VII.A.);
- (9) all of the tape recording of the
meeting of March 22, 1973, involving
the President, John Dean, John
Ehrlichman, H. R. Haldeman and John
Mitchell from 1:57 to 3:43 p.m.
(Item VIII.A.);
- (10) notes of H. R. Haldeman of the
meeting of March 22, 1973, involving
the President, John Dean, John
Ehrlichman, H. R. Haldeman and John
Mitchell from 1:57 to 3:43 p.m.
(Item VIII.B.);
- (11) notes of the President of his meet-
ing of April 15, 1973, with John
Dean from 9:17 to 10:12 p.m. (Item
IX.A.).

Under the decision of the Court of Appeals, "all portions of the tapes [and other materials] relevant to matters within the proper scope of the grand jury's investigations" should be produced for the grand jury, unless the District Court determines "that the public interest served by nondisclosure of particular statements or information outweighs the need for that information demonstrated by the grand jury." Nixon v. Sirica, slip opinion at 33. Apart from any materials alleged to contain national defense information, ^{*/} the opinion contemplated that the President on remand would "present to

*/ Counsel for the President do not now contend that any of the subpoenaed material contain national defense information.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY SUBPOENA DUCES TECUM]
ISSUED TO RICHARD M. NIXON, OR ANY]
SUBORDINATE OFFICER, OFFICIAL OR]
EMPLOYEE WITH CUSTODY OR CONTROL OF]
CERTAIN DOCUMENTS OR OBJECTS]

Misc. No. 47-73

FILED ✓

DEC 19 1973

JAMES F. DAVEY, Clerk

ORDER

The Court having examined in camera the items noted below pursuant to its order and opinion of August 29, 1973, and the decision of the United States Court of Appeals for the District of Columbia Circuit entered October 12, 1973, the Court hereby makes the following rulings on claims of privilege asserted by the President:

1. Item I A 1 (tape recording of a meeting between the President and John Erlichman on June 20, 1972, in the Executive Office Building (EOB) office from 10:25 to 11:20 a.m., required under part 1(a) of the grand jury subpoena duces tecum) --

The claim of privilege is sustained in full for the reasons that the recorded conversation consists of advice to the President by his then senior assistant for domestic affairs on official policy decisions then pending before the President, it includes conveyance to the President by his assistant of the advice of other identified persons within the administration on the same matters, and nothing in the conversation relates to Watergate or anything connected therewith.

2. Item I A 2 (notes of John Erlichman relating to the June 20, 1972 EOB office meeting between the President and Mr. Erlichman from 10:25 to 11:20 a.m., required under part 1(a) of the grand jury subpoena duces tecum) --

The claim of privilege is sustained in full inasmuch as

the notes relate solely to the conversation which is itself privileged (see paragraph 1 above).

3. Item I B 1 (tape recording of a meeting between the President and H. R. Haldeman on June 20, 1972, in the EOB office from 11:26 a.m. to 12:45 p.m., required under part i(a) of the grand jury subpoena duces tecum) --

The claim of privilege is sustained with the exception of that portion of the tape recording played in open court on November 27, 1973, for which portion the Court understands the claim of privilege to be waived. Insofar as the claim of privilege is sustained, the Court's ruling is based on the fact that the conversation consists of advice to the President by a senior advisor on official decisions then pending before the President, and none of the conversation recorded relates to Watergate or anything connected therewith.

4. Item I B 2 (notes of H. R. Haldeman relating to the June 20, 1972 EOB office meeting between the President and Mr. Haldeman from 11:26 a.m. to 12:45 p.m., required under part 1(a) of the grand jury subpoena duces tecum) --

Inasmuch as this item has been introduced in court as exhibit # 61 in evidence, the Court deems the claim of privilege to have been waived, and no ruling is necessary.

5. Item II A (portion of a dictating belt dictated by the President as a part of his personal diary on June 20, 1972, at 8:30 p.m. containing the President's recollections of his telephone conversation of that day with John N. Mitchell, required under part 1(b) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.

6. Item III A (tape recording of a meeting between the President, H. R. Haldeman and John N. Mitchell on June 30, 1972, in the EOB office from 12:55 to 2:10 p.m., required under part 1(c) of

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the grand jury subpoena duces tecum) --

The claim of privilege is sustained with the exception of those portions which, pursuant to the Court's inquiry, counsel for the President have identified by letter to the Court dated 18 December 1973, and filed under seal herein, counsel having consented thereby to the release of said portions to the Special Prosecutor. Insofar as the claim of privilege is sustained, the Court's ruling is based on the fact that the conversation recorded consists of advice to the President by his senior staff assistant and his former Attorney General relating to official matters, includes discussion of highly personal matters and in all undisclosed portions, does not relate to Watergate or anything connected therewith.

7. Item III B (notes of H. R. Haldeman relating to the June 30, 1972, EOB office meeting between the President, Mr. Haldeman and John N. Mitchell occurring from 12:55 to 2:10 p.m., required under part 1(c) of the grand jury subpoena duces tecum) --

The claim of privilege is sustained in full inasmuch as the notes relate solely to the conversation which is itself privileged (see paragraph 6 above).

8. Item IV A (tape recording of a meeting between the President, H. R. Haldeman and John W. Dean, III on September 15, 1972, in the Oval Office from 5:27 to 6:17 p.m., required under part 1(d) of the grand jury subpoena duces tecum) --

The claim of privilege, which relates to the latter portion of the recorded conversation, is sustained in full for the reason that the privileged portion consists of discussions with and advice from the President's senior assistant and his counsel on matters relating to the President's conduct of his official duties, and contains nothing related to Watergate or anything connected therewith.

For the preceding portions of the recorded conversation no claim of privilege is asserted.

9. Item IV B (notes of H. R. Haldeman relating to the meeting between the President, Mr. Haldeman and John W. Dean, III on September 15, 1972, in the Oval office from 5:27 to 6:17 p.m., required under part 1(d) of the grand jury subpoena duces tecum) --

The claim of privilege, which covers all but a portion of page two of the notes, is sustained in full for the reason that the privileged parts are either not covered by the grand jury subpoena duces tecum or relate solely to conversation which is itself privileged (see paragraph 8 above).

For that portion of page two of the notes that follows the words "John Dean" circled in ink, no claim of privilege is asserted.

10. Item V A (tape recording of a meeting between the President, H. R. Haldeman and John W. Dean, III on March 12, 1973, in the Oval office from 12:42 to 2:00 p.m., required under part 1(e) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.

11. Item VI A (tape recording of a meeting between the President, H. R. Haldeman and John W. Dean, III on March 21, 1973, in the Oval office from 10:12 to 11:55 a.m., required under part 1(f) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.

12. Item VI B (portion of a cassette tape recording dictated by the President as a part of his personal diary on March 21, 1973, at 9 p.m. containing the President's recollections of conversations of that day with John W. Dean, III; required under part 1(f) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.

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13. Item VII A (tape recording of a meeting between the President, H. R. Haldeman, John Erlichman, John W. Dean, III and Ronald Zeigler in the EOB office on March 21, 1973, from 5:20 to 6:01 p.m., required under part 1(g) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.

14. Item VIII A (tape recording of a meeting between the President, H. R. Haldeman, John Erlichman, John W. Dean, III and John N. Mitchell on March 22, 1973, in the EOB office from 1:57 to 3:43 p.m., required under part 1(h) of the grand jury subpoena duces tecum) --

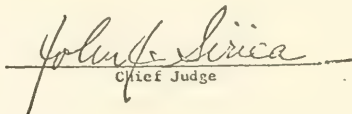
No claim of privilege asserted.

15. Item VIII B (notes of H. R. Haldeman relating to the March 22, 1973 EOB office meeting between the President, Mr. Haldeman, John Erlichman, John W. Dean, III and John N. Mitchell from 1:57 to 3:43 p.m., required under part 1(h) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.

16. Item IX A (notes of the President relating to a meeting between the President and John W. Dean, III on April 15, 1973, in the EOB office from 9:17 to 10:12 p.m., required under part 1(i) of the grand jury subpoena duces tecum) --

No claim of privilege asserted.


Chief Judge

Dated: December 19, 1973

75. On November 27, 1973 Buzhardt sent to Jaworski six of the logs of meetings and telephone conversations with the President (Chapin, Gray, Kleindienst, Krogh, Strachan, Young) that had been requested by Cox on June 13, 1973. The Kleindienst log furnished to the Special Prosecutor shows no meeting between the President and Kleindienst on April 25, 1973. The President has stated and Kleindienst has testified that Kleindienst met with the President on April 25, 1973.

	Page
75.1 Letter from J. Fred Buzhardt to Leon Jaworski, November 27, 1973 (received from Watergate Special Prosecution Force), with attached meetings and conversations between the President and Richard Kleindienst, April 25, 1973, (received from White House).....	884
75.2 Richard Kleindienst testimony, 9 SSC 3574.....	886
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75.4 President Nixon statement, August 15, 1973, 9 Presidential Documents 991, 993.....	889

THE WHITE HOUSE

WASHINGTON

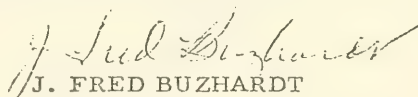
November 27, 1973

Dear Mr. Jaworski:

Enclosed herewith are logs of contact with the President for Messrs. Dwight Chapin, L. Patrick Gray, Richard Kleindienst, Egil Krogh (January 1, 1972 to May 30, 1973), Gordon Strachan and David Young. The record reveals no personal contact for the President and Mr. Fred LaRue.

This complies with all of your requests for personal contact of individuals with the President.

Sincerely,


J. FRED BUZHARDT
Special Counsel

Honorable Leon Jaworski
Special Prosecutor
Watergate Special Prosecution Force
1425 K Street, N. W.
Washington, D. C. 20005

Enclosures

Richard Kleindienst

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101544

101544

March 25, 1973

PM	12:13		President placed long distance call to Kleindienst -- not completed
	12:23		President placed long distance call to Kleindienst -- not completed
	12:41	12:47	President received long distance call from Kleindienst
	2:16	2:32	President received long distance call from Kleindienst

April 15, 1973

AM	8:41		President received local call from Kleindienst Steve Bull took call
	10:13	10:15	President received local call from Kleindienst
PM	1:12	2:22	President met with Kleindienst
	3:36		President received local call from Kleindienst -- Not completed
	3:48	3:49	President received local call from Kleindienst
	4:00	5:15	President met with Kleindienst & H. Petersen

April 20, 1973

AM	8:39	10:35	Cabinet Meeting -- Kleindienst attended
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April 25, 1973

PM	3:08		President received local call from Kleindienst -- not completed
	3:14	3:16	President received local call from Kleindienst
	7:22	7:25	President placed local call to Kleindienst
	8:20	8:23	President placed local call to Kleindienst

NOTE: THE ABOVE DOCUMENT WAS RECEIVED BY THE HOUSE JUDICIARY COMMITTEE FROM THE WHITE HOUSE. THE DOCUMENT IS IDENTICAL TO THE COMPILATION RECEIVED BY THE WATERGATE SPECIAL PROSECUTION FORCE.

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Mr. DORSEN. When did you first learn of the fact, which apparently is a fact, that White House employees or persons working at the behest of the White House employees burglarized the office of the psychiatrist of Dr. Daniel Ellsberg?

Mr. KLEINDIENST. I learned that amazing bit of information some time in the morning of Wednesday, April 25, 1973.

Mr. DORSEN. And how did you learn it?

Mr. KLEINDIENST. Mr. Petersen called me and said that he had a very urgent matter and could he come up to my office. I do not know if I had anybody in there but if I did I got him out. He came up in a minute and handed to me, without saying anything, a copy of a memorandum dated April 16 from Mr. Silbert to himself, a buck slip from him to Mr. Kevin Marony, the Deputy Assistant Attorney General for the Internal Security Section of the Criminal Division, and a memo from a Mr. John Martin to Mr. Marony dated some time that week. I do not recall the date of that. It would have been after April 16 and before April 25.

I read the two memos after I had recovered my composure and had uttered some of my abrupt remarks. He and I then began to discuss the dire serious nature of this amazing revelation. We discussed it for some time. It had a—it had a fantastic potential effect upon the trial of the *Ellsberg* case. It had a—certainly a fantastic potential with respect to the constitutional rights of Mr. Ellsberg, a defendant. And I believe our conversation kicked around until just before noon.

At noon I had an appointment to go with Solicitor General Griswold to the Department of Defense and be with him at a luncheon in his honor by the Judge Advocate General's Corps of the U.S. Army. I remember in the car outlining a hypothetical situation to Dean Griswold as a means by which, as I did quite often to get the benefit of his advice and his wisdom and his counsel.

Prior to the time I went to lunch, Henry and I had arrived without difficulty and simultaneously at two conclusions. No. 1, that we had to transmit this information immediately to Judge Byrne through our chief prosecutor, Mr. Nissen, in Los Angeles, without delay, and No. 2, that because of the explosive—just because of the nature of the situation, that I should immediately contact the President and inform him of this situation and also of what I was going to do.

Before lunch I then placed a call to the White House. Usually when you call and want to see the President they want to know what you want to talk to him about. I was very insistent in this instance to say it was a matter of great urgency but I could not describe the reason for the meeting.

When I got back from my lunch in honor of Dean Griswold, soon thereafter I received a call from the White House that if I could come over right away, I could see the President. I did. I gave him—I had those memos, those papers with me. I had some—I had a couple of cases that, you know, I could discuss, you know, a little note pad, but I did not give those citations. He, without hesitation, one moments hesitation, said that the course of action that I was going to pursue was the only thing possible to be done. He caused the memos to be Xeroxed. He kept a copy of the memos and I left.

The meeting did not last very long because there was no problem in his mind or my mind or anybody else's mind as to what we had to do under the law.

Kunzig, who is now an associate judge of the U.S. Court of Claims.

Mr. Sampson has been Acting Administrator of General Services since June 2, 1972. He joined the General Services Administration in 1969 as Commissioner of the Federal Supply Service. From 1970 to 1972 he was Commissioner of the Public Buildings Service in GSA and the first Deputy Administrator of GSA for Special Projects.

He came to the General Services Administration after 6 years in Pennsylvania State government, where he was secretary of administration and budget secretary under Gov. Raymond P. Shafer, and deputy secretary for procurement, department of property and supplies, under Gov. William W. Scranton. Prior to entering government service, he was employed by the General Electric Co. for 12 years.

Mr. Sampson was born on October 8, 1926, in Warren, R.I. He received his B.S. degree in business administration from the University of Rhode Island in 1951 and has done graduate work at the George Washington University.

Active in several professional organizations, Mr. Sampson was presented the Synergy III Award for outstanding contributions toward the advancement of architecture by the Society of American Registered Architects in 1972. In 1973 he was selected as one of the Top Ten Public Works Men of the Year, and he was named an honorary member of the American Institute of Architects.

He and his wife, Blanche, have four children and reside in Washington, D.C.

NOTE: For the President's statement upon announcing his intention to nominate Mr. Sampson, see the preceding item.

The Watergate Investigation

Statements by the President. May 22, 1973

Recent news accounts growing out of testimony in the Watergate investigations have given grossly misleading impressions of many of the facts, as they relate both to my own role and to certain unrelated activities involving national security.

Already, on the basis of second- and third-hand hearsay testimony by persons either convicted or themselves under investigation in the case, I have found myself accused of involvement in activities I never heard of until I read about them in news accounts.

These impressions could also lead to a serious misunderstanding of those national security activities which, though totally unrelated to Watergate, have become entangled in the case. They could lead to further compromise of sensitive national security information.

I will not abandon my responsibilities. I will continue to do the job I was elected to do.

In the accompanying statement, I have set forth the facts as I know them as they relate to my own role.

With regard to the specific allegations that have been made, I can and do state categorically:

1. I had no prior knowledge of the Watergate operation.
2. I took no part in, nor was I aware of, any subsequent efforts that may have been made to cover up Watergate.
3. At no time did I authorize any offer of executive clemency for the Watergate defendants, nor did I know of any such offer.
4. I did not know, until the time of my own investigation, of any effort to provide the Watergate defendants with funds.
5. At no time did I attempt, or did I authorize others to attempt, to implicate the CIA in the Watergate matter.
6. It was not until the time of my own investigation that I learned of the break-in at the office of Mr. Ellsberg's psychiatrist, and I specifically authorized the furnishing of this information to Judge Byrne.
7. I neither authorized nor encouraged subordinates to engage in illegal or improper campaign tactics.

In the accompanying statement, I have sought to provide the background that may place recent allegations in perspective. I have specifically stated that executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters under investigation. I want the public to learn the truth about Watergate and those guilty of any illegal actions brought to justice.

Allegations surrounding the Watergate affair have so escalated that I feel a further statement from the President is required at this time.

A climate of sensationalism has developed in which even second- or third-hand hearsay charges are headlined as fact and repeated as fact.

Important national security operations which themselves had no connection with Watergate have become entangled in the case.

As a result, some national security information has already been made public through court orders, through the subpoenaing of documents, and through testimony witnesses have given in judicial and Congressional proceedings. Other sensitive documents are now threatened with disclosure. Continued silence about these operations would compromise rather than protect them, and would also serve to perpetuate a grossly distorted view—which recent partial disclosures have given—of the nature and purpose of those operations.

...in the area of the change of administration and which bore directly on the negotiations then in progress. Additional assignments included tracing down other national security leaks, including one that seriously compromised the U.S. negotiating position in the SALT talks.

The work of the unit tapered off around the end of 1971. The nature of its work was such that it involved matters that, from a national security standpoint, were highly sensitive then and remain so today.

These intelligence activities had no connection with the break-in of the Democratic headquarters, or the aftermath.

I considered it my responsibility to see that the Watergate investigation did not impinge adversely upon the national security area. For example, on April 18, 1973, when I learned that Mr. Hunt, a former member of the Special Investigations Unit at the White House, was to be questioned by the U.S. Attorney, I directed Assistant Attorney General Petersen to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters. Subsequently, on April 25, 1973, Attorney General Kleindienst informed me that because the Government had clear evidence that Mr. Hunt was involved in the break-in of the office of the psychiatrist who had treated Mr. Ellsberg, he, the Attorney General, believed that despite the fact that no evidence had been obtained from Hunt's acts, a report should nevertheless be made to the court trying the Ellsberg case. I concurred, and directed that the information be transmitted to Judge Byrne immediately.

WATERGATE

The burglary and bugging of the Democratic National Committee headquarters came as a complete surprise to me. I had no inkling that any such illegal activities had been planned by persons associated with my campaign; if I had known, I would not have permitted it. My immediate reaction was that those guilty should be brought to justice, and, with the five burglars themselves already in custody, I assumed that they would be.

Within a few days, however, I was advised that there was a possibility of CIA involvement in some way.

It did seem to me possible that, because of the involvement of former CIA personnel, and because of some of their apparent associations, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in.

In addition, by this time, the name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted to the fact that he had previously been a member of the Special Investigations Unit in the White House. Therefore, I was also concerned that the Watergate investigation might well lead to an inquiry into the activities of the Special Investigations Unit itself.

In this area, I felt it was important to avoid disclosure of the details of the national security matters with which the group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive.

I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal—and not at that time having any idea of the extent of political abuse which Watergate reflected—I also had to be deeply concerned with ensuring that neither the covert operations of the CIA nor the operations of the Special Investigations Unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit—and to see that this was personally coordinated between General Walters, the Deputy Director of the CIA, and Mr. Gray of the FBI. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way.

On July 6, 1972, I telephoned the Acting Director of the FBI, L. Patrick Gray, to congratulate him on his successful handling of the hijacking of a Pacific Southwest Airlines plane the previous day. During the conversation Mr. Gray discussed with me the progress of the Watergate investigation, and I asked him whether he had talked with General Walters. Mr. Gray said that he had, and that General Walters had assured him that the CIA was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him to press ahead with his investigation.

It now seems that later, through whatever complex of individual motives and possible misunderstandings, there were apparently wide-ranging efforts to limit the investigation or to conceal the possible involvement of members of the Administration and the campaign committee.

I was not aware of any such efforts at the time. Neither, until after I began my own investigation, was I aware of any fundraising for defendants convicted of the break-in at Democratic headquarters, much less authorize any such fundraising. Nor did I authorize any offer of executive clemency for any of the defendants.

In the weeks and months that followed Watergate, I asked for, and received, repeated assurances that Mr. Dean's own investigation (which included reviewing files and sitting in on FBI interviews with White House personnel) had cleared everyone then employed by the White House of involvement.

In summary, then:

(1) I had no prior knowledge of the Watergate bugging operation, or of any illegal surveillance activities for political purposes.

(2) Long prior to the 1972 campaign, I did set in motion certain internal security measures, including legal

The time has come to turn Watergate over to the courts, where the questions of guilt or innocence belong. The time has come for the rest of us to get on with the urgent business of our Nation.

Last November, the American people were given the clearest choice of this century. Your votes were a mandate, which I accepted, to complete the initiatives we began in my first term and to fulfill the promises I made for my second term.

This Administration was elected to control inflation—to reduce the power and size of Government—to cut the cost of Government so that you can cut the cost of living—to preserve and defend those fundamental values that have made America great—to keep the Nation's military strength second to none—to achieve peace with honor in Southeast Asia, and to bring home our prisoners of war—to build a new prosperity, without inflation and without war—to create a structure of peace in the world that would endure long after we are gone.

These are great goals, they are worthy of a great people, and I would not be true to your trust if I let myself be turned aside from achieving those goals.

If you share my belief in these goals—if you want the mandate you gave this Administration to be carried out—then I ask for your help to ensure that those who would exploit Watergate in order to keep us from doing what we were elected to do will not succeed.

I ask tonight for your understanding, so that as a Nation we can learn the lessons of Watergate and gain from that experience.

I ask for your help in reaffirming our dedication to the principles of decency, honor, and respect for the institutions that have sustained our progress through these past two centuries.

And I ask for your support in getting on once again with meeting your problems, improving your life, building your future.

With your help, with God's help, we will achieve those great goals for America.

Thank you and good evening.

NOTE: The President spoke at 9 p.m. in his Oval Office at the White House. His address was broadcast live on radio and television.

The Watergate Investigation

Statement by the President. August 15, 1973

On May 17 the Senate Select Committee began its hearings on Watergate. Five days later, on May 22, I issued a detailed statement discussing my relationship to the matter. I stated categorically that I had no prior knowledge of the Watergate operation and that I neither knew of nor took part in any subsequent efforts to cover it up. I also stated that I would not invoke executive privilege as to testimony by present and former members of my White House Staff with respect to possible criminal acts then under investigation.

Thirty-five witnesses have testified so far. The record is more than 7,500 pages and some 2 million words long. The allegations are many, the facts are complicated, and

the evidence is not only extensive but very much in conflict. It would be neither fair nor appropriate for me to assess the evidence or comment on specific witnesses or their credibility. That is the function of the Senate Committee and the courts. What I intend to do here is to cover the principal issues relating to my own conduct which have been raised since my statement of May 22, and thereby to place the testimony on those issues in perspective.

I said on May 22 that I had no prior knowledge of the Watergate operation. In all the testimony, there is not the slightest evidence to the contrary. Not a single witness has testified that I had any knowledge of the planning for the Watergate break-in.

It is also true, as I said on May 22, that I took no part in, and was not aware of, any subsequent efforts to

write a complete report on all that he knew of the entire Watergate matter. On March 28, I had Mr. Ehrlichman call the Attorney General to find out if he had additional information about Watergate generally or White House involvement. The Attorney General was told that I wanted to hear directly from him, and not through any staff people, if he had any information on White House involvement or if information of that kind should come to him. The Attorney General indicated to Mr. Ehrlichman that he had no such information. When I learned on March 30 that Mr. Dean had been unable to complete his report, I instructed Mr. Ehrlichman to conduct an independent inquiry and bring all the facts to me. On April 14, Mr. Ehrlichman gave me his findings, and I directed that he report them to the Attorney General immediately. On April 15, Attorney General Kleindienst and Assistant Attorney General Petersen told me of new information that had been received by the prosecutors.

By that time the fragmentary information I had been given on March 21 had been supplemented in important ways, particularly by Mr. Ehrlichman's report to me on April 14, by the information Mr. Kleindienst and Mr. Petersen gave me on April 15, and by independent inquiries I had been making on my own. At that point, I realized that I would not be able personally to find out all of the facts and make them public, and I concluded that the matter was best handled by the Justice Department and the grand jury. On April 17, I announced that new inquiries were underway, as a result of what I had learned on March 21 and in my own investigation since that time. I instructed all Government employees to cooperate with the judicial process as it moved ahead on this matter and expressed my personal view that no immunity should be given to any individual who had held a position of major importance in this Administration.

My consistent position from the beginning has been to get out the facts about Watergate, not to cover them up.

On May 22 I said that at no time did I authorize any offer of executive clemency for the Watergate defendants, nor did I know of any such offer. I reaffirm that statement. Indeed, I made my view clear to Mr. Ehrlichman in July 1972, that under no circumstances could executive clemency be considered for those who participated in the Watergate break-in. I maintained that position throughout.

On May 22 I said that "it was not until the time of my own investigation that I learned of the break-in at the office of Mr. Ellsberg's psychiatrist, and I specifically authorized the furnishing of this information to Judge Byrne." After a very careful review, I have determined that this statement of mine is not precisely accurate. It was on March 17 that I first learned of the break-in at the office of Dr. Fielding, and that was 4 days before the beginning of my own investigation on March 21. I was

told then that nothing by way of evidence had been obtained in the break-in. On April 18 I learned that the Justice Department had interrogated or was going to interrogate Mr. Hunt about this break-in. I was gravely concerned that other activities of the Special Investigations Unit might be disclosed, because I knew this could seriously injure the national security. Consequently, I directed Mr. Petersen to stick to the Watergate investigation and stay out of national security matters. On April 25 Attorney General Kleindienst came to me and urged that the fact of the break-in should be disclosed to the court, despite the fact that, since no evidence had been obtained, the law did not clearly require it. I concurred and authorized him to report the break-in to Judge Byrne.

In view of the incident of Dr. Fielding's office, let me emphasize two things.

First, it was and is important that many of the matters worked on by the Special Investigations Unit not be publicly disclosed because disclosure would unquestionably damage the national security. This is why I have exercised executive privilege on some of these matters in connection with the testimony of Mr. Ehrlichman and others. The Senate Committee has learned through its investigation the general facts of some of these security matters and has to date wisely declined to make them public or to contest in these respects my claim of executive privilege.

Second, I at no time authorized the use of illegal means by the Special Investigations Unit, and I was not aware of the break-in of Dr. Fielding's office until March 17, 1973.

Many persons will ask why, when the facts are as I have stated them, I do not make public the tape recordings of my meetings and conversations with members of the White House Staff during this period.

I am aware that such terms as "separation of powers" and "executive privilege" are lawyers' terms, and that those doctrines have been called "abstruse" and "esoteric." Let me state the commonsense of the matter. Every day a President of the United States is required to make difficult decisions on grave issues. It is absolutely essential, if the President is to be able to do his job as the country expects, that he be able to talk openly and candidly with his advisers about issues and individuals and that they be able to talk in the same fashion with him. Indeed, on occasion, they must be able to "blow off steam" about important public figures. This kind of frank discussion is only possible when those who take part in it can feel assured that what they say is in the strictest confidence.

The Presidency is not the only office that requires confidentiality if it is to function effectively. A Member of Congress must be able to talk in confidence with his assistants. Judges must be able to confer in confidence with their law clerks and with each other. Throughout our entire history the need for this kind of confidentiality

76. On November 29, 1973 the Special Prosecutor filed a four-count felony indictment against the President's former appointments secretary Dwight Chapin charging that Chapin had testified falsely before the Grand Jury regarding the extent of his knowledge of Donald Segretti's activities in the 1972 campaign.

Page

76.1 United States v. Chapin indictment, November 29, 1973.. 892

NOV 29 1973

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

DWIGHT L. CHAPIN,
Defendant.Criminal No. 990-73
Violation of
18 U.S.C. § 1623
(False Declarations)INDICTMENTCOUNT ONE

The Grand Jury charges:

1. On or about April 11, 1973, in the District of Columbia, DWIGHT L. CHAPIN, the defendant, having duly taken an oath that he would testify truthfully, and while testifying in a proceeding before the June, 1972 Grand Jury, a Grand Jury of the United States, duly empanelled and sworn in the United States District Court for the District of Columbia, did knowingly make false material declarations as hereinafter set forth.

2. At the time and place alleged, the June, 1972 Grand Jury of the United States District Court for the District of Columbia was conducting an investigation in conjunction with the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation to determine whether violations of Title 18, United States Code, sections 371, 612, 2511, and 22 D.C. Code 1801(b) and other statutes of the United States and of the District of Columbia had been committed

Beall J.

in the District of Columbia and elsewhere, and to identify the individual or individuals who had committed, caused the commission of, or conspired to commit such violations.

3. It was material to the said investigation that the Grand Jury ascertain the nature of the activities engaged in by Donald Segretti, a subject of the investigation, and the identity of the individual or individuals who directed or had knowledge of those activities.

4. At the time and place alleged, DWIGHT L. CHAPIN, the defendant, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 as follows:

Q. Did you ever discuss in any way
with Mr. Segretti the distribution
of any campaign literature or
statements of any kind?

A. No.

Q. To your knowledge did Mr. Segretti
ever distribute any statements of
any kind, or any campaign literature
of any kind?

A. Not that I am familiar with.

5. The underscored portions of the declarations quoted in paragraph 4, made by the defendant, were material to the said investigation and, as he then and there well knew, were false.

(In violation of Title 18, United States Code, section 1623.)

COUNT TWO

The Grand Jury further charges:

1. The Grand Jury realleges all of the allegations of paragraphs 1, 2 and 3 of Count One of this indictment.

2. At the time and place alleged, DWIGHT L. CHAPIN, the defendant, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 of Count One as follows:

Q. Now following June 17 and the Watergate, what contact, if any, did you have with Mr. Segretti?

A. It's been very, very limited.

Q. Well, have you ever seen him for example, since June 17th?

A. Until today, I don't believe so.

Q. Have you ever talked to him on the telephone?

A. Yes.

Q. Can you tell us when?

A. I talked to him when he called me to tell me that the FBI had called him. That was the first time that I talked to him. That would have been, I guess, probably the end of July or June, or the beginning of July.

Q. What did you say to him once he advised you that the FBI had contacted him?

A. I told him to talk to the FBI.

76.1 UNITED STATES v CHAPIN INDICTMENT, N. VINCENT, 1953

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3. The underscored portion of the declarations quoted in paragraph 2, made by the defendant, was material to the said investigation and, as he then and there well knew, was false.

(In violation of Title 18, United States Code, section 1623.)

COUNT THREE

The Grand Jury further charges:

1. The Grand Jury realleges all of the allegations of paragraphs 1, 2 and 3 of Count One of this indictment.

2. At the time and place alleged, DWIGHT L. CHAPIN, the defendant, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 of Count One as follows:

Q. What candidates do you recall receiving information about?
Senator Muskie - was he one?

A. Yes. I think virtually Muskie and Humphrey, Wallace.

Q. Senator McGovern?

A. Jackson, McGovern. I think virtually all of them. I forget now who all the candidates were. I think that covers it.

Q. At one time or another during this period of time, in the early months of 1972, you received information from Mr. Segretti relating to all these candidates?

A. As I recall, two of them may be mentioned in one little note or something. But they were not documents or reports - what you and I would consider reports.

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Q. Did you ever express any interest to him, or give him any directions or instructions with respect to any single or particular candidate?

A. Not that I recall.

3. The underscored portion of the declarations quoted in paragraph 2, made by the defendant, was material to the said investigation and, as he then and there well knew, was false.

(In violation of Title 18, United States Code, section 1623.)

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COUNT FOUR

The Grand Jury further charges:

1. The Grand Jury realleges all of the allegations of paragraphs 1, 2 and 3 of Count One of this indictment.
2. At the time and place alleged, DWIGHT L. CHAPIN, the defendant, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 of Count One as follows:

Q. What arrangements were made with respect to him insofar as the financing of this operation?

A. I believe I gave him instructions to call --to get in touch with Herb Kalmbach.

Q. Well, did you discuss with him --that is with Mr. Segretti --anything with respect to amounts of money?

A. Never. I never knew what he was paid.

Q. Did you ever, prior to his contacting Mr. Kalmbach, did you ever discuss the range of money that you were discussing or talking about?

A. No, I didn't.

* * *

Q. What did he tell you as to the arrangement he had worked out?

A. Nothing. He just said that he had met with Don and that everything was taken care of. I didn't ask what that meant.

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Q. Did you ever find out the salary arrangement or the expense arrangement that had been worked out with Mr. Segretti?

A. Only through the Washington Post.

Q. Outside of that you had no knowledge?

A. No.

* * *

Q. (A juror) Mr. Chapin, not unless this question and answer has gotten past me, but how did Mr. Segretti operate, and with whose funds, and where did the funds come from?

A. The funds that Mr. Segretti operated with, I have no knowledge as to where they were originated from. I only know - actually I don't know for a fact that Mr. Kalmbach paid Mr. Segretti.

I only know that I told Mr. Kalmbach to get together with Mr. Segretti and to work out payment. I don't know the amount of money or the form in which it was exchanged, or where the money would have originally come from.

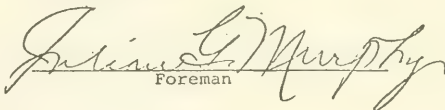
78.1 UNITED STATES v. CHAPIN INDICTMENT, NOVEMBER 22, 1973

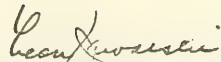
-9-

3. The underscored portions of the declarations quoted in paragraph 2, made by the defendant, were material to the said investigation and, as he then and there well knew, were false.

All in violation of Title 18, United States Code, section 1623.

A TRUE BILL


Foreman


LEON JANKOWSKI
Special Prosecutor

77. On November 30, 1973 Egil Krogh pleaded guilty to a one-count information charging that Krogh had conspired to violate the constitutional rights of Dr. Lewis J. Fielding by breaking into his office in 1971. Krogh agreed to disclose all relevant information and documents in his possession and to testify as a witness. On January 3, 1974 Krogh issued a statement on his offense and his role. He stated that he had received no specific instruction or authority whatsoever regarding the break-in from the President, directly or indirectly.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	Criminal No. 85-7-75
v.)	
EGIL KROGH, JR.,	)	Violation of 18 U.S.C.
	)	§241 (Conspiracy
Defendant.	)	Against Rights of
	)	Citizens)

INFORMATION

The United States of America, by its Attorney, the Special Prosecutor, Watergate Special Prosecution Force, charges:

1. From on or about July 1, 1971 to on or about May 25, 1973, EGIL KROGH, JR., the DEFENDANT, was an officer and employee of the United States Government, first as Deputy Assistant for Domestic Affairs to the President of the United States, and later as Under Secretary of Transportation.

2. At all times material herein DEFENDANT and various other co-conspirators unnamed herein, were officials and employees of the United States Government and were acting in that capacity.

3. From on or about July 1, 1971 to the present, in the District of Columbia and elsewhere, the DEFENDANT, unlawfully, willfully and knowingly did combine, conspire, confederate and agree with the co-conspirators to injure, oppress, threaten, and intimidate Dr. Lewis J. Fielding, a citizen of the United States, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and to conceal such activities.

4. It was a part of the conspiracy that the DEFENDANT and the co-conspirators would, without legal process, probable cause, search warrant, or other lawful authority, enter the building and offices of Dr. Lewis J. Fielding located at 450 North Bedford Drive, Beverly Hills, Los Angeles County, California, with intent to search for, examine, and photograph documents and records containing confidential information concerning Daniel Ellsberg, and thereby injure, oppress, threaten and intimidate Dr. Lewis J. Fielding in the free exercise and enjoyment of the right and privilege secured to him by the Fourth Amendment to the Constitution of the United States to be secure in his person, house, papers and effects against unreasonable searches and seizures.

5. It was further a part of the conspiracy that with DEFENDANT'S knowledge, consent, approval and assistance, two of the co-conspirators would and did travel to California on or about August 25, 1971 for the purpose of preparing to carry out and implement the plan and scheme.

6. It was further a part of the conspiracy that with DEFENDANT'S knowledge, consent, approval and assistance, five of the co-conspirators would and did travel to California on or about September 1, 1971 for the purpose of implementing and carrying out the plan and scheme, and did without legal process, probable cause, search warrant or other lawful authority, covertly and unlawfully enter and cause to be entered the offices of Dr. Lewis J. Fielding located in Beverly Hills, California, and did unlawfully search and cause to be searched the premises therein.

7. In furtherance of, and in order to effectuate the objects of the conspiracy, the DEFENDANT and the co-conspira-

tors did perform and did cause to be performed the following overt acts, among others, in the District of Columbia:

OVERT ACTS

1. On or about August 11, 1971, the DEFENDANT sent a memorandum to an official of the United States Government.

2. On or after August 11, 1971, the DEFENDANT had a conversation with an official of the United States Government.

3. On or after August 27, 1971, the DEFENDANT met with E. Howard Hunt, Jr., and an official of the United States Government.

4. On or about August 30, 1971, the DEFENDANT had a telephone conversation with an official of the United States Government.

5. On or about September 1, 1971, an official of the United States Government caused the delivery of a sum of cash to the DEFENDANT.

6. On or about September 1, 1971, the DEFENDANT caused a sum of cash to be delivered to an official of the United States Government.

7. On or about September 7, 1971, the DEFENDANT had a conversation with an official of the United States Government.

8. On or about August 28, 1972, the DEFENDANT testified under oath.

(In violation of Title 18, United States
Code, Section 241.)



LEON JAWORSKI
Special Prosecutor
Watergate Special Prosecution
Force

CRIMINAL DOCKET

United States District Court for the District of Columbia

United States vs. EGIL KROGH, JR.

Cr. No.

-857-73

Supplemental Page No.

2

DATE

PROCEEDINGS

73Nov 30

✓ WAIVER of rights by prosecution by indictment & consent to proceed by information, filed.

✓ Letter to Shulman from Leon Laworski dated 11-30-73, identified as Government Exhibit #1 filed.

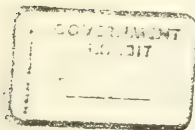
✓ INFORMATION filed in Open Court; ARRAIGNED; PLEA OF GUILTY entered (Conspiracy against rights of citizens in violation of T 18 USC 241); referred; bond, GESELL, J. Rep-Watson Stephen N. Shulman, Atty

73Dec 3

TRANSCRIPT OF PROCEEDINGS OF 11-30-73; Pages 1-12; Court copy; Reporter: I.Z. Watson

73Dec 12

TRANSCRIPT OF PROCEEDINGS of 11-13-73; Pages 1-129; Court copy; Rep-Watson



UNITED STATES DEPARTMENT OF JUSTICE
1425 K Street, N.W.
Washington, D.C. 20005

November 30, 1973 76.3

Q. 857-73
Leon Jaworski letter, Exhibit 1
United States v. Krogh

FILED

NOV 30 1973

Stephen N. Shulman, Esq.
Cadwalader, Wickersham & Taft
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036

JAMES F. DWEY, Clerk

Dear Mr. Shulman:

On the understandings specified below, the United States will accept a guilty plea from Egil Krogh, Jr. to a one-count information charging a conspiracy to violate the rights of a citizen under Title 18, United States Code, Section 241. This will dispose of pending or potential charges growing out of Mr. Krogh's previous testimony, including that testimony of August 28, 1972, and will also dispose of all other potential charges against your client which might otherwise arise out of the September 1971 unlawful entry into the offices of Dr. Lewis J. Fielding, or out of the so-called Watergate incident, and the alleged cover-ups relating thereto.

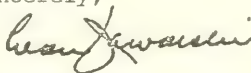
This disposition is predicated on the understanding that the United States will move for leave to file a dismissal of the indictment filed October 11, 1973, charging Mr. Krogh with two counts of violating Title 18, United States Code, Section 1623. This disposition will not bar prosecution for any other false testimony given hereafter should it ever be discovered that your client has given such testimony in connection with the matters within the jurisdiction of the Special Watergate Prosecutor.

This understanding is also predicated upon Mr. Krogh's responsibility for full and truthful disclosure of all relevant information and documents in his possession, which disclosure is to commence subsequent to sentencing. Ultimately, of course,

he may be required to testify as a witness for the United States in any and all cases with respect to which he may have relevant information.

The United States will make no recommendation concerning Mr. Krogh's sentencing but will bring to the attention of the probation authorities information in its possession relating to Mr. Krogh. The United States will join with you in urging that Mr. Krogh be permitted to remain on recognizance pending sentencing. The United States, if requested, will make an appropriate recommendation concerning Mr. Krogh to any investigative, disciplinary or fact-finding body.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leon Jaworski", written in a cursive style.

Leon Jaworski
Special Prosecutor

*at District
1/24/74
Tom Bell*

STATEMENT OF DEFENDANT ON THE OFFENSE AND HIS ROLE

In describing the offense to which I have pleaded guilty, and the nature of my role in it, I am hampered by the fact that my present evaluation is totally antagonistic to the understanding I had at the time. I feel unable to set forth what happened without continuing on to discuss how my present contrary appraisal developed. And the process of reappraisal has been so extensive and so agonizing that my present evaluation is very firmly fixed, which makes recounting my feelings at the time of the offense all the more difficult. I have been aided by a review of the files in the Executive Office Building on December 13 and 14, 1973.

This case involves the work of the Special Investigation Unit established within the White House to deal with the problem of unauthorized disclosure of classified information.

My role began on July 15 or 16, 1971, in San Clemente. At that time, John Ehrlichman informed me that the President wanted me to perform an urgent assignment in response to the unauthorized disclosure of the Pentagon Papers. The entire resources of the executive branch were to be brought to bear on this task, and I was to make certain that the relevant departments and agencies treated the matter as one of highest priority.

Because Dr. Daniel Ellsberg had been identified as responsible for the leak of the Pentagon Papers, he was to be

a vital part of the inquiry. Specifically, his motivations, his possible collaborators, and his potential for further disclosures were to be determined to the greatest extent possible. In that connection, Mr. Ehrlichman instructed me that the President had directed that I read his book, Six Crises, and particularly the chapter on Alger Hiss, in preparation for this assignment. The message that I drew from this chapter was the President's concern that we proceed with respect to the Pentagon Papers and Dr. Ellsberg with a zeal comparable to that he exercised as a Congressman in investigating Alger Hiss. Mr. Ehrlichman instructed me that David Young of Dr. Kissinger's staff would be working with me on this assignment and that we should form a small unit for the purpose. Mr. Young was to devote full time to the unit. My participation was to be part time, for I was to continue my ongoing responsibilities, particularly solidification of the Vietnam drug program and creation of a Cabinet Committee to fight international narcotics traffic. As it happened, these latter assignments occupied most of my time in August. Finally, Mr. Ehrlichman instructed me that the activities of the unit were to be impressed with the highest classification and kept secret even within the White House staff. To handle our assignment, Mr. Young and I received some of the most sensitive security clearances.

Mr. Young and I arranged for space in the Executive Office Building, and elaborate special security systems were

installed. Mr. E. Howard Hunt was assigned to the unit on the basis of his extensive prior experience with the Central Intelligence Agency. Mr. G. Gordon Liddy, with whom I had worked on matters of narcotics law enforcement and gun control while he was at the Treasury Department, came to the unit because of his prior experience with the Federal Bureau of Investigation.

A damage assessment prepared by the CIA prior to establishment of the unit reported grounds to suspect that a full set of the Pentagon Papers had reached the Soviet Embassy. I was early informed that similar intelligence had been furnished by the FBI. Yet The New York Times had received only a partial set. This development reinforced suspicion that Dr. Ellsberg or one of his collaborators, if any, may have had some sort of foreign involvement.

On July 24, I was summoned to the President's office with Mr. Ehrlichman. This meeting followed by one day the appearance in The New York Times of the fallback position of the United States in the SALT talks at Helsinki. The President appeared deeply troubled by this unauthorized disclosure and directed me to expand the work of the unit to cover it. He described the matter of unauthorized disclosures as intolerable, directed the extensive administration of polygraph tests, and made clear that the protection of national security information must outweigh any individual reluctance to be polygraphed. He discussed the creation of a new security classification which would condition access to national security information upon advance

agreement to submit to polygraphing. He was deeply concerned that any further disclosure of such information could only undermine the SALT and Vietnam peace negotiations. His intense determination was evident. He instructed that further leaks would not be allowed and made me feel personally responsible for carrying out this instruction.

The work of the unit went forward with regard to the SALT leak, the Pentagon Papers, Dr. Ellsberg, and some other unauthorized disclosures. Polygraphing was immediately begun (although on a far more limited scale than originally envisioned). Dr. Ellsberg's extensive knowledge of classified national security information in addition to the Pentagon Papers was ascertained. The intensity of the national security concern expressed by the President fired up and overshadowed every aspect of the unit's work.

It was in this context that the Fielding incident, the break-in into the offices of Dr. Ellsberg's psychiatrist, took place. Doubtless, this explains why John Dean has reported that I told him that instructions for the break-in had come directly from the Oval office. In fact, the July 24 meeting was the only direct contact I had with the President on the work of the unit. I have just listened to a tape of that meeting, and Dr. Ellsberg's name did not appear to be mentioned. I had been led to believe by the White House Statement of May 22, 1973, that the President had given me instructions regarding Dr. Ellsberg in the July 24, 1971, meeting. It must be that

those instructions were relayed to me by Mr. Ehrlichman. In any event, I received no specific instruction or authority whatsoever regarding the break-in from the President, directly or indirectly.

As I stated in the affidavit I filed before Judge Byrne, Mr. Ehrlichman gave the unit authority to engage in covert activity to obtain information on Dr. Ellsberg. The precise nature of that authorization and the extent to which it specifically covered the break-in are matters that will be the subject of testimony in the prosecution pending in California and that may be involved in a prosecution in the District of Columbia. So are the origination of the idea of a break-in and the manner of its formulation. I have expressed the desire, to which the Special Prosecutor has acceded, to defer any testimony until after sentencing. I would simply say that I considered that a break-in was within the authority of the unit and that I did not act to foreclose one from occurring despite the opportunity to do so. Indeed, I was under the clear impression that such operations were by no means extraordinary by the CIA abroad and, until 1966, by the FBI in this country -- an impression confirmed by former officers of both agencies on the unit's staff.

The break-in came about because the unit felt it could leave no stone unturned in the investigation of Dr. Ellsberg. The aims of the operation were many:

a) to ascertain if Dr. Ellsberg acted alone or with collaborators;

b) to ascertain if Dr. Ellsberg in fact had any involvement with the Soviets or other foreign power;

c) to ascertain if Dr. Ellsberg had any characteristics that would cause him to make further disclosures;

d) to ascertain if prosecution of Dr. Ellsberg would induce him to make further disclosures that he otherwise would not.

The potential uses of the above information were also multiple. Primary, of course, was preventing further disclosures by Dr. Ellsberg and putting an end to whatever machinery for disclosure might have been developed. It was also thought, particularly by E. Howard Hunt, that the sought information could be useful in causing Dr. Ellsberg himself to declare his true intentions. Finally, there is the point that has been most stressed in the current investigative process -- the potential use of the information in discrediting Dr. Ellsberg as an anti-war spokesman.

My best recollection is that I focused on the prevention of further leaks by Dr. Ellsberg and the termination of any machinery he may have established for such disclosures. That was the use most central to the assignment of the unit as I understood it. But my precise focus is fundamentally not important to my guilt or innocence, because at the time of the operation I did not consider it necessary to assign relative weightings to the potential uses of the sought information. All of them were dictated by the national security interest as I then understood it.

To my knowledge, the break-in netted nothing. When I saw the photographs that had been taken of the damage done, I immediately felt that a mistake had been made. The visibility of physical damage was somehow disturbing beyond the theoretical impression of covert activity. I recommended to Mr. Ehrlichman that no further actions of that sort be undertaken. He concurred and stated that he considered the operation to have been in excess of his authorization.

My participation in the work of the unit progressively diminished, and for all intents and purposes ended in November, 1971. I was recalled to the unit for a few days in December, 1971, in connection with the India-Pakistan conflict leak. In that period, I was asked to authorize a wire tap in connection with a highly sensitive aspect of that leak. I declined and was thereupon removed from the unit the same day. I learned in reviewing the unit's files on December 13, 1973, that the tap was effected after my removal along with another one in the same investigation. These are the only instances of wire-tapping by the unit of which I am aware, and I first learned of them on December 13.

In August, 1972, I was deposed at the Department of Justice in connection with the grand jury investigation of the Watergate break-in. I had been repeatedly instructed by Mr. Ehrlichman that the President considered the work of the unit a matter of the highest national security and that I was under no circumstances to discuss it. I was specifically advised by John Dean that the Fielding incident was not relevant to and

would not be touched upon in the deposition. The Assistant United States Attorney who conducted the deposition himself advised me that he was not interested in pursuing national security matters.

In the course of the deposition, I was asked questions relating to travel by Messrs. Hunt and Liddy. I answered the questions by interpreting them as excluding national security and thus the travel of Liddy and Hunt to California for the Fielding incident. This interpretation was highly strained, reflecting a desperate effort on my part to avoid any possible disclosure of the work of the unit in accordance with the instructions of the President that had been relayed to me by Mr. Ehrlichman.

Subsequently, in April 1973, when Judge Byrne requested persons having knowledge of the Fielding incident to file affidavits with him, I determined that a disclosure of my role was imperative. Because I was still operating under the instructions of the President that the work of the unit was not to be revealed under any circumstances, I sought the advice of Attorney General-designate Elliot Richardson and requested Mr. Ehrlichman to seek the President's permission for me to explain my involvement in the incident. Mr. Ehrlichman informed me on May 2 that the President had authorized me to make a statement, and I submitted an affidavit setting forth details of my role in the Fielding incident on May 4. In describing the travel to California by Messrs. Liddy and Hunt, that affidavit was inconsistent,

and intentionally so, with the answers I had given in my deposition (except for the strained interpretation I have described).

I was indicted for false declarations on the basis of those answers in October of this year. In moving to dismiss the indictment, my counsel argued, with my approval, that the rule of Barr v. Matteo (providing official immunity from suit) extended to criminal prosecutions, and that the authority and discretion possessed by an official in my position embraced false statements to protect classified national security information from unauthorized disclosure.

The Court rejected that argument as fundamentally incompatible with the very existence of our society. That ruling, and the questions asked by the judge in the course of the argument, spurred my reappraisal of my whole conception of the Fielding incident.

While I early concluded that the operation had been a mistake, it is only recently that I have come to regard it as unlawful. I see now that the key is the effect that the term "national security" had on my judgment. The very words served to block critical analysis. It seemed at least presumptuous if not unpatriotic to inquire into just what the significance of national security was.

When the issue was the proper response to a demonstration, for example, it was natural for me to question whether the proposed course was not excessive. The relative rankings of the rights of demonstrators and the protection of law and order

could be debated, and the range of possible accommodations explored, without the subjects of patriotism and loyalty even rising to the level of consciousness. But to suggest that national security was being improperly invoked was to invite a confrontation with patriotism and loyalty and so appeared to be beyond the scope and in contravention of the faithful performance of the duties of my office.

Yet what is national security? I mentioned that all of the potential uses of the information sought in the Fielding incident were consistent with my then concept of national security. The discrediting of Dr. Ellsberg, which today strikes me as repulsive and an inconceivable national security goal, at the time would have appeared a means of blocking the possibility that he would become such a popular figure that others possessed of classified information would be encouraged to emulate him. More broadly, it would serve to diminish any influence he might have in mobilizing opposition to the course of ending the Vietnam war that had been set by the President. And that course was the very definition of national security. Freedom of the President to pursue his planned course was the ultimate national security objective.

The fact that I do not recall this use as my personal motivating force provides scant comfort. I can recollect that I would have accepted the rationalization I have just described. The invocation of national security stopped me from asking the question, "Is this the right thing to do."

My experience in the months since my resignation from Government, during which I have been under intense investigation and multiple indictments, has also affected my view. I have throughout this most difficult period been free, first because I had not yet been indicted and later on recognizance. And I perceive this freedom as the very essence of our society and our system.

This freedom for me is not a privilege but a right protected by our Constitution. It is one of a host of rights that I as an American citizen am fortunate to share with Dr. Ellsberg and Dr. Fielding. These rights of the individual cannot be sacrificed to the mere assertion of national security.

National security is obviously a fundamental goal and a proper concern of any country. It is also a concept that is subject to a wide range of definitions, a factor that makes all the more essential a painstaking approach to the definition of national security in any given instance.

But however national security is defined, I now see that none of the potential uses of the sought information could justify the invasion of the rights of the individuals that the break-in necessitated. The understanding I have come to is that these rights are the definition of our nation. To invade them unlawfully in the name of national security is to work a destructive force upon the nation, not to take a protective measure. I have been recalling the U. S. personnel in Vietnam with whom I served in the military and with whom I visited

during my trips there as a civilian official. I believe they would agree with my present understanding that the Fielding incident cannot be justified by even the most honestly held belief that it might contribute to the expeditious ending of the war by protecting the ongoing negotiations. I believe they would conclude that they were fighting on behalf of a country which prized the rights of Dr. Fielding and not one which so easily disregarded them.

I see now that the sincerity of my motivation was not a justification but indeed a contributing cause of the incident. I hope that the young men and women who are fortunate enough to have an opportunity to serve in Government can benefit from this experience and learn that sincerity can often be as blinding as it is worthy. I hope they will recognize that the banner of national security can turn perceived patriotism into actual disservice. When contemplating a course of action, I hope they will never fail to ask, "Is this right?"

By:

Egil Krogh, Jr.
Egil Krogh, Jr.

Dated: January 3, 1974

78. On December 19, 1973 Jaworski furnished the Senate Judiciary Committee a written summary of his understanding of the arrangement made with the President through General Haig and confirmed by Bork and Attorney General-Designate William Saxbe regarding the independence he was to have in serving as Special Prosecutor. Jaworski stated that it had been expressly confirmed that he was to proceed with complete independence, including the right to sue the President, if necessary; and that the President would not discharge him or take any action that interfered with his independence without first consulting Majority and Minority leaders and Chairmen and ranking members of the Judiciary Committees of the House and the Senate and obtaining a consensus that accorded with his proposed action.

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78.1 Letter from Leon Jaworski to James Eastland, December 19, 1973, SJC, Saxbe Nomination Hearings 32.....	924

mittees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Sincerely,

ROBERT H. BORK,
Acting Attorney General.

WATERGATE SPECIAL PROSECUTION FORCE,
U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., December 19, 1973.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In the course of my testimony before the Senate Judiciary Committee, Senator Byrd requested me to furnish the Committee a written summary of my understanding of the arrangement made with the President through General Haig (and confirmed by Acting Attorney General Robert H. Bork and Attorney General-nominee, William B. Saxbe) regarding the independence I was to have in serving as Watergate Special Prosecutor. I agreed to do so and the statement below is made in compliance with my promise.

It was expressly confirmed that I was to proceed in the discharge of my responsibilities with complete independence, including the right to sue the President, if necessary, and that if an impasse occurred between us, the President would not discharge me or take any action that interfered with my independence without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and obtaining a consensus view that accorded with his proposed action.

Sincerely yours,

LEON JAWORSKI,
Special Prosecutor.

Senator BYRD. Mr. Chairman, it is my understanding that there is a desire to recess the committee now over until 2:30.

Senator HART. As Chairman Eastland left it was his suggestion, and I think that given the time we have held these witnesses to this moment it would make sense to recess now until 2:30.

Senator BYRD. I agree, Mr. Chairman.

Senator COOK. Mr. Chairman?

Senator HART. Senator Cook?

Senator COOK. Mr. Chairman, I wonder if I might be able to make a short statement—

Senator HART. But we can excuse the witnesses.

Senator COOK. If I might make a statement right at 2:30? I do have a conference committee this afternoon and I wonder if I might do so, so that I can leave?

Senator BYRD. And I understand that following Senator Cook, I shall continue with my questions?

Senator HART. Yes.

79. On January 15, 1974 the court-appointed panel of experts submitted a summary report respecting the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report included interim conclusions that the erasures occurred in the process of erasing and re-recording at least five to nine separate and contiguous segments and that hand operation of the recording controls of the Uher 5000 machine examined by the experts must have been and were required to produce each erasure segment.

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79.1 Summary Report to Chief Judge John Sirica from the Advisory Panel on the White House Tapes, January 15, 1974, Exhibit 145, <u>In re Grand Jury</u> , Misc. 47-73	926

3. Summary Report of January 15, 1974

January 15, 1974

Report to Chief Judge John J. Sirica

From the Advisory Panel on the White House Tapes

In response to your request we have made a comprehensive technical study of the White House tape of June 20, 1972, with special attention to a section of buzzing sounds that lasts approximately 18.5 minutes. Paragraphs that follow summarize our findings and indicate the kinds of tests and evidence on which we base the findings.

Magnetic signatures that we have measured directly on the tape show that the buzzing sounds were put on the tape in the process of erasing and re-recording at least five, and perhaps as many as nine, separate and contiguous segments. Hand operation of keyboard controls on the Uher 5000 recorder was involved in starting and again in stopping the recording of each segment. The magnetic signatures observed on the tape show conclusively that the 18.5-minute section could not have been produced by any single, continuous operation. Further, whether the footpedal was used or not, the recording controls must have been operated by hand in the making of each segment.

The erasing and recording operations that produced the buzzing section were done directly on the tape we received for study. We have found that this tape is 1814.5 feet long, which lies within a normal range for tapes sold as 1800 feet in length. We have examined the entire tape for physical splices and have found none. Other tests that we have made thus far are consistent with the assumption that the tape is an original and not a re-recording.

D.12

A Uher 5000 recorder, almost surely the one designated as Government Exhibit #60, was used in producing the 18.5-minute section. Support for this conclusion includes recorder operating characteristics that we measured and found to correspond to signal characteristics observed on the evidence tape.

The buzzing sounds themselves originated in noise picked up from the electrical power line to which the recorder was connected. Measurements of the frequency spectrum of the buzz showed that it is made up of a 60 cycles per second fundamental tone, plus a large number of harmonic tones at multiples of 60. Especially strong are the third harmonic at 180 and the fifth harmonic at 300 cycles per second. As many as forty harmonics are present in the buzz and create its "raucous" quality. Variations in the strength of the buzz, which during most of the 18.5-minute section is either "loud" or "soft," probably arose from several causes including variations in the noise on the power line, erratic functioning of the recorder, and changes in the position of the operator's hand while running the recorder. The variations do not appear to be caused by normal machine operations.

Can speech sounds be detected under the buzzing? We think so. At three locations in the 18.5-minute section, we have observed a fragment of speech-like sound lasting less than one second. Each of the fragments lies exactly at a place on the tape that was missed by the erase head during the series of operations in which the several segments of erasure and buzz were put on the tape. Further, the frequency spectra of the sounds in these fragments bear a reasonable resemblance to the spectra of speech sounds.

Can the speech be recovered? We think not. We know of no technique that could recover intelligible speech from the buzz section. Even the fragments that we have observed are so heavily obscured that we cannot tell what was said.

The attached diagram illustrates the sequence of sound events in the 18.5-minute section. Also illustrated is a sequence of Uher operations "erase-record on" and "erase-record off" that are consistent with signatures that we measured on the evidence tape. The five segments that can be identified unequivocally are labeled "1" through "5." In addition, the diagram shows four segments of uncertain ending.

D.13

In developing the technical evidence on which we have based the findings reported here, we have used laboratory facilities, measuring instruments, and techniques of several kinds, including: digital computers located in three different laboratories, specialized instruments for measuring frequency spectra and waveforms, techniques for "developing" magnetic marks that can be seen and measured directly on the tape, techniques for measuring the performance characteristics of recorders and voice-operated switches, and statistical methods for analyzing experimental results.

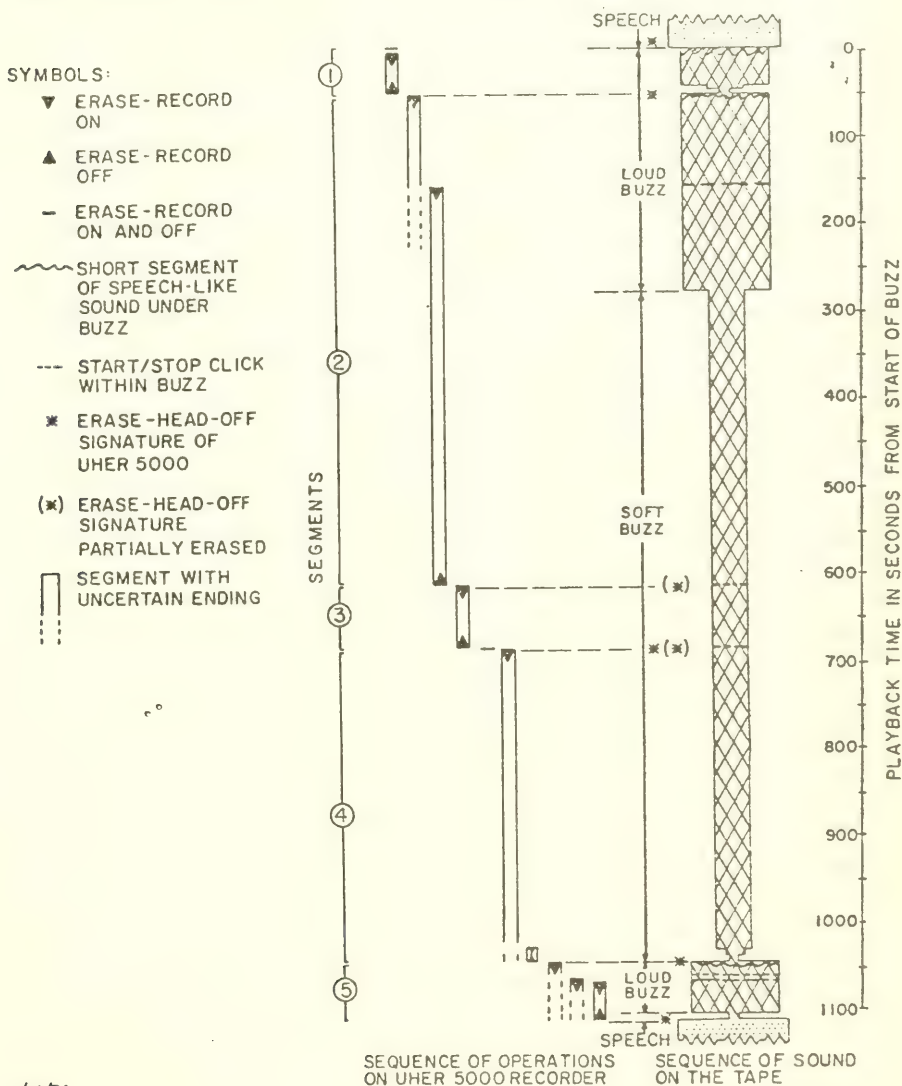
In summary we have reached complete agreement on the following conclusions:

1. The erasing and recording operations that produced the buzz section were done directly on the evidence tape.
2. The Uher 5000 recorder designated Government Exhibit #60 probably produced the entire buzz section.
3. The erasures and buzz recordings were done in at least five, and perhaps as many as nine, separate and contiguous segments.
4. Erasure and recording of each segment required hand operation of keyboard controls on the Uher 5000 machine.
5. Erased portions of the tape probably contained speech originally.
6. Recovery of the speech is not possible by any method known to us.
7. The evidence tape, insofar as we have determined, is an original and not a copy.

Respectfully submitted,

Richard H. Bolt
Franklin S. Cooper
James L. Flanagan
John G. (Jay) McKnight
Thomas G. Stockham, Jr.
Mark R. Weiss

KEY TO BUZZ SECTION IN WHITE HOUSE TAPE OF JUNE 20, 1972



1/14/74

80. In his State of the Union Address on January 30, 1974 the President said that he had provided to the Special Prosecutor all the material that the Special Prosecutor needed to conclude his investigations and to prosecute the guilty and clear the innocent.

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80.1 President Nixon State of the Union Address, January 30, 1974, 10 Presidential Documents 113, 121.....	932

OFFICIAL DOCUMENT, RICHARD NIXON, 1974

THE STATE OF THE UNION

*The President's Address, Delivered Before a Joint Session of the Congress,
January 30, 1974*

Mr. Speaker, Mr. President, my colleagues in the Congress, our distinguished guests, my fellow Americans:

We meet here tonight at a time of great challenge and great opportunities for America. We meet at a time when we face great problems at home and abroad that will test the strength of our fiber as a Nation. But we also meet at a time when that fiber has been tested and it has proved strong.

America is a great and good land, and we are a great and good land because we are a strong, free, creative people and because America is the single greatest force for peace anywhere in the world. Today, as always in our history, we can base our confidence in what the American people will achieve in the future on the record of what the American people have achieved in the past.

Tonight, for the first time in 12 years, a President of the United States can report to the Congress on the state of a Union at peace with every nation of the world. Because of this, in the 22,000-word message on the state of the Union that I have just handed to the Speaker of the House and the President of the Senate, I have been able to deal primarily with the problems of peace—with what we can do here at home in America for the American people—rather than with the problems of war.

The measures I have outlined in this message set an agenda for truly significant progress for this Nation and the world in 1974. Before we chart where we are going, let us see how far we have come.

It was 5 years ago on the steps of this Capitol that I took the oath of office as your President. In those 5 years, because of the initiatives undertaken by this Administration, the world has changed. America has changed. As a result of those changes, America is safer today, more prosperous today, with greater opportunity for more of its people than ever before in our history.

Five years ago America was at war in Southeast Asia. We were locked in confrontation with the Soviet Union. We were in hostile isolation from a quarter of the world's people who lived in Mainland China.

Five years ago our cities were burning and besieged.

Five years ago our college campuses were a battleground.

Five years ago crime was increasing at a rate that struck fear across the Nation.

Five years ago the spiraling rise in drug addiction was threatening human and social tragedy of massive proportion, and there was no program to deal with it.

Five years ago—as young Americans had done for a generation before that—America's youth still lived under the shadow of the military draft.

OFFICIAL RECORDS, 1974, 1974, 1974

of your own there will deliver his... of... 27 years from now, in the year 2001.

Well, whichever one it is, I want you to be able to look back with pride and to say that your first year here were great years and recall that you were here in this Old Capitol when America ended its longest war and began its longest peace.

Mr. Speaker, and Mr. President and my distinguished colleagues and our guests:

I would like to add a personal word with regard to an issue that has been of great concern to all Americans over the past year. I refer, of course, to the investigations of the so-called Watergate affair.

As you know, I have provided to the Special Prosecutor voluntarily a great deal of material. I believe that I have provided all the material that he needs to conclude his investigations and to proceed to prosecute the guilty and to clear the innocent.

I believe the time has come to bring that investigation and the other investigations of this matter to an end. One year of Watergate is enough.

And the time has come, my colleagues, for not only the executive, the President, but the Members of Congress, for all of us to join together in devoting our full energies to these great issues that I have discussed tonight which involve the welfare of all of the American people in so many different ways as well as the peace of the world.

I recognize that the House Judiciary Committee has a special responsibility in this area, and I want to indicate on this occasion that I will cooperate with the Judiciary Committee in its investigation. I will cooperate so that it can conclude its investigation, make its decision, and I will cooperate in any way that I consider consistent with my responsibilities to the Office of the Presidency of the United States.

There is only one limitation. I will follow the precedent that has been followed by and defended by every President from George Washington to Lyndon B. Johnson of never doing anything that weakens the Office of the President of the United States or impairs the ability of the Presidents of the future to make the great decisions that are so essential to this Nation and to the world.

Another point I should like to make very briefly. Like every Member of the House and Senate assembled here tonight, I was elected to the office that I hold. And like every Member of the House and Senate, when I was elected to that office, I knew that I was elected for the purpose of doing a job and doing it as well as I possibly can. And I want you to know that I have no intention whatever of ever walking away from the job that the people elected me to do for the people of the United States.

Now, needless to say, it would be understatement if I were not to admit that the year 1973 was not a very easy year for me personally or for my family. And as I have already indicated, the year 1974 presents very great and serious problems as very great and serious opportunities are also presented.

But my colleagues, this I believe. With the help of God, who has blessed this land so richly, with the cooperation of the Congress, and with the support of the American people, we can and we will make the year 1974 a year of unprecedented progress toward our goal of building a

81. On February 14, 1974 Jaworski wrote to Chairman Eastland of the Senate Judiciary Committee that on February 4 Special Counsel to the President James St. Clair had written Jaworski that the President had decided not to comply with the Special Prosecutor's outstanding requests for recordings relating to the Watergate break-in and coverup. Jaworski also stated that St. Clair subsequently informed him that the President had refused to reconsider the decision to terminate cooperation with the Watergate investigation, at least with regard to producing any tape recordings of Presidential conversations and that the White House had refused cooperation in the investigation of dairy contributions and had refused to allow review of files of two former staff members in the area of the Plumbers investigation. Jaworski stated that requests for documents were still pending.

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House Judiciary Committee staff

Text of Jaworski's Letter to Senate Panel on White House Refusal to Yield Tapes

Special to The New York Times
WASHINGTON, Feb. 14 -- Following is the text of a letter from Leon Jaworski, the special Watergate prosecutor, to Senator James O. Eastland, chairman of the Senate Judiciary Committee, informing him of the White House's refusal to provide tape recordings and other data. Both Mr. Jaworski and the White House declined to release the White House letter on the ground that it was "confidential."

In your letter to me of Nov. 29, 1973, you asked that I advise the committee on the status of our requests to the White House for evidence relating to investigations within the special prosecutor's jurisdiction. I previously had assured the committee in response to a question by Senator Mathias, that I would make such a report available (hearings on special prosecutor, Nov. 20, 1973, Pt. 2, P 579), and I reaffirmed that commitment in response to a question by Senator Byrd when testifying in conjunction with then Attorney General-designate Saxbe on Dec. 12, 1973 (hearings on nomination of William B. Saxbe, P. 38, 43).

Moreover, as I am certain you are aware, the guidelines for the special prosecutor worked out under your committee's supervision expressly provide that the special prosecutor may make public reports as he deems appropriate.

I delayed answering your letter until Dec. 12, 1973, because at that time I was beginning discussions with General Haig and Mr. Buzhardt regarding the production of evidence. As I indicated in my response the White House by then had provided us with copies of recordings of nine Presidential conversations. Moreover, we had made arrangements for a member of our staff to examine the files of the White House special investigations unit, known as the plumbers. Several requests were still in dispute, however, and I represented that I would give you a detailed report at an appropriate date.

I am now in a position to fulfill this responsibility to the committee. On Feb. 4, James D. St. Clair, special counsel to the President, wrote to me, informing me that the President has decided not to comply with our outstanding requests for recordings for the grand jury investigations of the Watergate break-in and cover-up and certain dairy industry contributions, asserting that to do so would be inconsistent with the public interest and the constitutional integrity of the office of the Presidency.

Refusal to Reconsider

I met with Mr. St. Clair on Feb. 8 in order to explore all possible avenues for resolving this impasse. As a result of this meeting, I represented to Mr. St. Clair that if the outstanding requests were granted, we would have no further requests for evidence relating to the grand Watergate break-in and cover-up. This was in response to the President's concern that there would be an endless stream of requests.

Nevertheless, late yesterday Mr. St. Clair informed me by letter that the President has refused to reconsider this earlier decision to terminate his cooperation with this investigation, at least with regard to producing any tape recordings of Presidential conversations. Accordingly, it is now clear that evidence I deem material to our investigations will not be forthcoming.

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House Judiciary Committee staff

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House Judiciary Committee staff

Important Material

In order that the committee may be fully apprised, I believe it would be appropriate to outline not only the material we have been refused, but also the material we have received.

First, in the area of the Watergate break-in and cover-up, the White House produced seven recordings, a cassette and a dictabelt pursuant to the order of Judge Siraca, [sic] upheld by the Court of Appeals, compelling compliance with the grand jury's subpoena duces tecum. In addition, the White House has provided us copies of four additional Presidential conversations and allowed me access to six others.

Based upon these recordings and additional evidence that have come into our possessions, on Jan. 9 I requested the White House to produce copies of the recordings of 25 specified Presidential meetings and telephone conversations. About two weeks later, the White House asked for a statement of "particularized need" for each recording. I provided the statement on the same day--Jan. 22, including two additional conversations. That statement shows that there is reason to believe that each of the conversations is material to a particular facet of our investigation.

Although it is true that the grand jury will be able to return indictments without the benefit of this material, the material is important to a complete and thorough investigation and may contain evidence necessary for any future trials.

I should add here that I never have insisted that any material considered by me irrelevant to our investigations should be produced. Where the White House has contended that certain conversations were actually not relevant or were of a sensitive nature, I have agreed to go to the White House--alone--to listen to the conversations. There was no indication in the latest refusals that any requested recording is either irrelevant to our inquiries or subject to some particularized privilege.

The second major area in which the White House now has refused cooperation involves the contributions of the dairy industry during 1971 and 1972. Having disqualified myself in that investigation, I am reporting on the basis of advice received from my deputy, Mr. Henry Ruth.

The investigation of possible offenses arising out of these contributions is far from complete, and the White House refusal to produce the requested tape recording and Presidential documents will retard the scope of this investigation. I am told that Mr. St. Clair advised Mr. Ruth orally that the White House would take under consideration a request narrower in scope. (Thus far, the White House has produced three recordings, as well as most of the documentation in the possession of the Civil Division of the Justice Department which was ordered produced in court in a related civil proceeding.)

Documents on 'Plumbers'

In the area of the plumbers investigation, the White House has supplied one tape recorder and a number of documents. As I indicated above, a member of our staff was permitted to review the files of the special investigations unit, and we subsequently were provided with the documents from those files relevant to our investigation. Also, after a search by Mr. Buzhardt, the White House delivered documents from the files of a former staff member but refused to permit us to review the files to make our own determination of relevance. The White

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House Judiciary Committee staff

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House Judiciary Committee staff

House also has refused to let us review the files of another former staff member, requested as early as August, 1973.

So that there is no misunderstanding of the extent of the White House's past cooperation, I call your attention to the letter I addressed to you on Nov. 14, 1973, regarding requests made by Mr. Cox. We also have received copies of three recordings relating to our I.T.T. investigation, and we have been promised certain documents in connection with an F.B.I. investigation, at our request, into the possible obstruction of justice arising out of the destruction of alteration of evidence.

Finally, there are six requests for documents relating to distinct areas of investigation still pending. Two requests date back respectively to August and October, 1973; the other four were made in November and December, 1973. Although some documents were produced pursuant to two of these and Mr. Buzhardt reported as to another that his limited search did not disclose any material, we have reason to believe that there are additional documents somewhere in the White House files. Mr. St. Clair has informed us that he has not had an opportunity to review these requests since replacing Mr. Buzhardt as special counsel to the President.

If I can be of any assistance to the committee, please do not hesitate to call on me.

Indistinct document retyped by
House Judiciary Committee staff

Text of Jaworski's Letter to Senate Panel on White House Refusal to Yield Tapes

Special to The New York Times

WASHINGTON, Feb. 14—Following is the text of a letter from Leon Jaworski, the special Watergate prosecutor, to Senator James O. Eastland, chairman of the Senate Judiciary Committee, informing him of the White House's refusal to provide tape recordings and other data. Both Mr. Jaworski and the White House declined to release the White House letter on the ground that it was "confidential."

In your letter to me of Nov. 29, 1973, you asked that I advise the committee on the status of our requests to the White House for evidence relating to investigations within the special prosecutor's jurisdiction. I previously had assured the committee in response to a question by Senator Mathias, that I would make such a report, renewable hearings on special prosecution. Nov. 20, 1973, Pt. 2, P. 579; and I reaffirmed that commitment in response to a question by Senator Byrd when testifying in conjunction with then Attorney General-designate Saxbe on Dec. 12, 1973 (hearings on nomination of William B. Saxbe, P. 38, 43).

Moreover, as I am certain you are aware, the guidelines for the special prosecutor worked out under your committee's supervision expressly provide that the special prosecutor may make public reports as he deems appropriate.

I delayed answering your letter until Dec. 12, 1973, be-

cause at that time I was beginning discussions with General Hale and Mr. Buchardt regarding the production of evidence. As I indicated in my response, the White House by then had provided us with copies of recordings of nine Presidential conversations. Moreover, we had made arrangements for a member of our staff to examine the files of the White House special investigations unit, known as the plumbers. Several requests were still in dispute, however, and I represented that I would give you a detailed report of an appropriate date.

I am now in a position to fulfill this responsibility to the committee. On Feb. 4, James O. St. Clair, special counsel to the President, wrote to me, informing me that the President has decided not to comply with our outstanding requests for recordings for the grand jury investigations of the Watergate break-in and cover-up and certain daily industry contributions, asserting that to do so would be inconsistent with the public interest and the constitutional identity of the office of the Presidency.

Refusal to Reconsider

I met with Mr. St. Clair on Feb. 5 in order to explore all possible avenues for resolving this impasse. As a result of our meeting, I represented to Mr. St. Clair that if the outstanding requests were granted, we would have no further requests for evidence relating to the grand

Watergate break-in and cover-up. This was in response to the President's concern that there would be an endless stream of requests.

Nevertheless, late yesterday Mr. St. Clair informed me by letter that the President has refused to reconsider this earlier decision to terminate his cooperation with this investigation, at least with regard to producing any tape recordings of Presidential conversations. Accordingly, it is now clear that evidence I deem material to our investigations will not be forthcoming.

Important Material

In order that the committee may be fully apprised, I believe it would be appropriate to outline not only the material we have been refused, but also the material we have received.

First, in the area of the Watergate break-in and cover-up, the White House produced seven recordings, a cassette and a dictabelt pursuant to the order of Judge Sirica, upheld by the Court of Appeals, compelling compliance with the grand jury's subpoena duces tecum. In addition, the White House has provided us copies of four additional Presidential conversations and allowed me access to six others.

Based upon these recordings and additional evidence that have come into our possession, on Jan. 9 I requested the White House to produce copies of the recordings of 20 specified Presidential

tial meetings and telephone conversations. About two weeks later, the White House asked for a statement of "particularized need" for each recording. I provided the statement on the same day—Jan. 22, including two additional conversations. That statement shows that there is reason to believe that each of the conversations is material to a particular facet of our investigation.

Although it is true that the grand jury will be able to return indictments without the benefit of this material, the material is important to a complete and thorough investigation and may contain evidence necessary for any future trials.

I should add here that I never have insisted that any material considered by me irrelevant to our investigations should be produced. Where the White House has contended that certain conversations were actually not relevant or were of a sensitive nature, I have agreed to go to the White House—alone—to listen to the conversations. There was no indication in the latest refusals that any requested recording is either irrelevant to our inquiries or subject to some particularized privilege.

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If I can be of any assistance to the committee, please do not hesitate to call on me.

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

March 13, 1974

DW

Received -
MAR 13 1974

John Doar, Esquire
Special Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear John:

Pursuant to the request you made in our meeting on March 7, I am enclosing a list of those materials that the President has refused to provide this office in connection with our investigations. (This list does not include requests still pending.)

We recognize, of course, that the information enclosed would be subject to subpoena, and, accordingly, we see no reason to require the Committee to follow that course. We should add, however, that in our view this information can be provided without violating any legal constraints or the appropriate limits of the separation of powers.

Also, I trust that the enclosed list will be handled by the Committee and its staff in accordance with the rules and procedures adopted by the Committee on February 22, 1974.

Sincerely,

Leon Jaworski

LEON JAWORSKI
Special Prosecutor

Enclosure

SCHEDULE OF MATERIALS REQUESTED BY
THE SPECIAL PROSECUTOR FROM THE
WHITE HOUSE IN CONNECTION WITH GRAND
JURY INVESTIGATIONS AND REFUSED AS
OF MARCH 11, 1974

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A. INVESTIGATION INTO THE ALLEGED WATERGATE
COVER-UP CONSPIRACY

Tape recordings of the following conversations:

1. Telephone conversation on June 20, 1972, between the President and Mr. Colson from 11:33 p.m. to 12:05 a.m. of June 21, 1972.
2. Three meetings on June 23, 1972, between the President and Mr. Haldeman from 10:04 to 10:39 a.m., from 1:04 to 1:13 p.m., and from 2:20 to 2:45 p.m.
3. Meetings between the President and Mr. Colson on February 13, 1973, from 9:48 to 10:52 a.m. and on February 14, 1973, from 10:13 to 10:49 a.m.
4. Meetings between the President and Mr. Haldeman on March 20, 1973, from 10:47 a.m. to 12:10 p.m. and from 6:00 to 7:10 p.m.
5. Meeting on March 21, 1973, between the President and Mr. Ehrlichman from 9:15 a.m. to 10:12 a.m.
6. Telephone conversation between the President and Mr. Colson on March 21, 1973, from 7:53 to 8:24 p.m.
7. Meeting on March 22, 1973, between the President and Mr. Haldeman from 9:11 to 10:35 a.m.
8. Meeting on March 27, 1973, from 11:10 a.m. to 1:30 p.m. between Mr. Ehrlichman and the President, with Mr. Haldeman present from 11:35 a.m. on.
9. Meeting on March 30, 1973, from 12:02 to 12:18 p.m. between Mr. Ehrlichman and the President. Mr. Ziegler may also have been present.
10. Telephone conversation on April 12, 1973, from 7:31 to 7:45 p.m. between the President and Mr. Colson.
11. Meeting on April 14, 1973, from 8:55 to 11:31 a.m. between Mr. Ehrlichman and the President in the President's EOB office. The President's daily diary shows that Mr. Haldeman was present from 9:00 to 11:30 a.m.

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12. Meeting on April 14, 1973, from 2:24 to 3:55 p.m. between Messrs. Ehrlichman and Haldeman and the President in the Oval Office.

13. Meeting on April 14, 1973, from 5:15 to 6:45 p.m. between Messrs. Ehrlichman and Haldeman and the President in the President's EOB office.

14. Telephone call on April 14, 1973, between the President and Mr. Ehrlichman from 11:22 to 11:53 p.m.

15. Meeting on April 15, 1973, from 1:12 to 2:22 p.m. between Mr. Kleindienst and the President in the President's EOB office.

16. Two telephone conversations on April 15, 1973, between 10:16 and 11:15 p.m. between Mr. Ehrlichman and Mr. Gray.

17. Two meetings between Messrs. Haldeman and Ehrlichman (or each) with the President on April 16, 1973, the first from 9:50 to 9:59 a.m., and the second from 10:50 to 11:04 a.m.

18. Meeting on April 19, 1973, from 8:26 to 9:32 p.m. between the President, Mr. John J. Wilson, and Mr. Frank H. Strickler in the President's EOB office.

19. Telephone conversation on April 19, 1973, from 9:37 to 9:53 p.m. between the President and Mr. Haldeman.

20. Telephone conversation on April 19, 1973, from 10:54 to 11:04 p.m. between the President and Mr. Ehrlichman.

21. Two telephone calls between the President and Mr. Haldeman on June 4, 1973, from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m.

B. INVESTIGATION INTO THE DAIRY INDUSTRY CONTRIBUTIONS

1. Any tape recordings, transcripts, memoranda, notes, or other writings relating to conversations between the President and Secretary Connally during the period February 15, 1971, to March 25, 1971. Information developed by this office indicates that in addition to the March 23, 1971, conversations between Secretary Connally and the President, Secretary Connally spoke to the President on March 11 (twice), March 16, March 18, and March 25, 1971.

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2. All documents, memoranda, and correspondence in the files of Murray M. Chotiner relating to:

(a) Political contributions received or expected to be received from the Associated Milk Producers, Inc., the Trust for Agricultural Political Education, the Mid-America Dairymen, Agricultural and Dairy Educational Political Trust, Dairymen, Inc.; and the Trust for Special Political Agricultural Community Education;

(b) The Section 22 Tariff Commission Recommendations proposed by the Tariff Commission on September 21, 1970; relating to dairy products;

(c) The milk price support level announced on March 12, 1971, and March 25, 1971; and

(d) The antitrust suit filed by the United States on February 1, 1972, against the Associated Milk Producers, Inc.

3. Any tape recordings, transcripts, memoranda, notes, and other writings relating to a meeting between Attorney General John Mitchell, Mr. Lee Nunn, and the President held on May 5, 1971.

C. INVESTIGATION INTO CAMPAIGN CONTRIBUTIONS IN CONNECTION WITH APPOINTMENT TO GOVERNMENT OFFICE

1. All letters, memoranda, or lists sent by Maurice H. Stans to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to a list of recommendations sent during or soon after the 1972 campaign and election period, and letters or memoranda addressed to Frederic V. Malek, which are believed to be in the files of the White House Personnel Office, similar communications sent by Mr. Stans to Peter M. Flanigan, which are believed to be in Mr. Flanigan's files or the Personnel Office files, and similar communications sent by Mr. Stans to Harry R. Haldeman, which are believed to be in Mr. Haldeman's files in Room 522 of the White House.

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2. All letters, memoranda, or lists sent by Herbert W. Kalmbach to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to those sent to Mr. Haldeman, Mr. Flanigan, Mr. Malek, and others in the Personnel Office.

3. All correspondence, memoranda, documents, or other writings pertaining to the consideration for Presidential appointment, appointment, reappointment, or transfer of J. Fife Symington, Jr., Vincent W. deRoulet, Dr. Ruth Farkas, Cornelius V. Whitney, John Safer, Daniel Terra, Kingdon Gould, Jr., Florenz Ourisman, Dr. Jacob O. Kamm, and Martin Seretean.

4. A list of recommendations, similar to that described in paragraph 1 above, prepared by Mr. Stans during or soon after the 1968 campaign and election period, access to which is necessary because of its relevance both as background to a complete investigation of this matter and to certain actual or proposed Presidential appointments in 1970 or 1971.

[D. INVESTIGATION INTO BREAK-IN AT OFFICE OF DR. FIELDING

Access to the files of John D. Ehrlichman.

82. On February 15, 1974 the White House released a statement by St. Clair commenting on the Special Prosecutor's February 14 letter to Senator Eastland. St. Clair stated that the President believed he had furnished sufficient evidence to determine whether probable cause existed that a crime had been committed and, if so, by whom.

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82.1 James St. Clair statement, February 15, 1974,	
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that I disagree with and that you disagree with, and they disagree with ours. But one-fourth of all the people of the world live there. And, therefore, we should have relations with them for the purpose of avoiding a conflict in war. But there is another reason.

Just a few months ago, as a result of that visit, there came into my office 15 doctors from the People's Republic of China. That is the first time in 25 years that doctors from the country in which one-fourth of all the people of the world live had ever visited the United States of America. And as I met them and talked to them through an interpreter I realized that if we are really going to do everything that we should and can to find a cure or a number of cures to the various types of cancer, which is one of the great goals we have, if we are going to do everything we can to develop better medical facilities and also the answers to other diseases that today are a mystery even to the great technical medical profession that we have, the answer is not necessarily only going to be found in America.

Oh, we have the best laboratories, I am sure. We have the best equipment in America. I think perhaps we have more qualified medical doctors and scientists in America in this field than any place in the world, but there are only 200 million Americans, and there are 3 billion that live in this world and where is the genius, the genius that may find an answer to the problem of cancer or arthritis or any of these other diseases that we all know are being studied and that you are contributing to.

It may not be an American. It may not be a white man, or a woman, for that matter. It may be somebody from Africa, from Asia, or even from China.

So one of the great objectives that I see looking ahead is not only to keep the peace, but to see to it that whatever the differences we have between governments, let's see that those who are working for good health for their people work together with our people so that as far as health is concerned, we work for good health not only for America, but for three billion people on this earth.

The question then is not simply peace in the sense of the absence of war; the question is what do you do with peace, and one of the things you do with it is build a better health care system, not only for America, but for the whole world.

One of the things you do is to build a communication between people even when governments disagree. Gandhi said many, many years ago that "Health is the true wealth, more important than gold and silver."

As we dedicate this hospital, this Health Care Center and its facilities today, let us say it is a dedication to better health, but also we are dedicating an institution which serves the true wealth, the true wealth of America and of the whole world, better health for all of us.

Thank you.

NOTE: The President spoke at 12:47 p.m. As printed above, this item follows the text of the White House press release.

Medical Report on the President's Daughter

Statement by Maj. Gen. Walter R. Tkach, Physician to the President, on the Hospitalization of Julie Nixon Eisenhower. February 14, 1974

Wednesday evening while in Indianapolis, Ind., Julie Eisenhower experienced severe discomfort in her lower abdomen. This morning when Julie awoke the pain became more severe. Due to the abdominal pain, Julie entered the Indiana University Hospital in Indianapolis this afternoon. An examination showed that the pain was caused by an ovarian cyst accompanied by internal bleeding. An operation will be performed this afternoon at Indiana University Hospital in Indianapolis to stop the internal bleeding.

Mrs. Nixon departed the residence at Key Biscayne at 4:20 this afternoon to fly to Indianapolis to be with Julie. The operation will be performed by Dr. Sprague H. Gardiner and Dr. Jack W. Pearson, professors of obstetrics and gynecology at the Indiana University School of Medicine. Mrs. Nixon was accompanied by Dr. William Lukash, Assistant Physician to the President.

Julie was in Indianapolis in connection with her work at the Saturday Evening Post.

NOTE: The statement was released at Key Biscayne, Fla.

Investigations by the Special Prosecutor

Statement by James D. St. Clair, Special Counsel to the President. February 15, 1974

In connection with the letter of the Special Prosecutor to Senator James O. Eastland, copies of which have been made available to the public, I want to make the following comments:

The President has fully cooperated with the Special Prosecutor and his staff to the extent consistent with the constitutional responsibilities of the Office of the Presidency. Recordings of Presidential conversations and papers voluntarily have been produced in a volume unprecedented in our history. In response to a subpoena the President produced recordings of eight conversations for review by Judge Sirica. Of these, only four and a portion of a fifth were ruled pertinent. In addition, recordings of 17 additional Presidential conversations and more than 700 documents were voluntarily furnished on request. In responding to these requests of the Special Prosecutor no attempt was made to confine the materials furnished to the strict narrow guidelines established by the Court of

Appeals as an exception to "the presumption of privilege premised on the public interest in confidentiality."

As soon as all these requests for recordings of Presidential conversations and documents had been furnished, the Special Prosecutor's office on January 9, 1974, after more than 19 months of grand jury investigation, submitted a request for 40 more tapes and an unspecified number of additional documents. The production of this material would have the necessary result of further delaying grand jury deliberations many months. A careful review of this request led me to the conclusion that this new material was at best only corroborative of or cumulative to evidence already before the grand jury and therefore was not essential to its deliberations. Apparently the Special Prosecutor agrees since he states in his letter that "the Grand Jury will be able to return indictments without the benefit of this material." The President believes that he has furnished sufficient evidence to determine whether probable cause exists that a crime has been committed and, if so, by whom. Under these circumstances, the President determined that continued and seemingly unending incursions into the confidentiality of Presidential communications was unwarranted, and instructed me to advise the Special Prosecutor that he respectfully declines to produce the additional material requested.

At the same time, the President has asked me to continue the private conversations I have been conducting with the Special Prosecutor. He has also given me firm instructions to cooperate fully, consistent with the principles of confidentiality of Presidential conversations, with a view toward bringing this matter to a prompt and just conclusion.

NOTE: The statement was released at Key Biscayne, Fla.

Counsellor to the President

*Announcement of Appointment of Dean Burch.
February 15, 1974*

The President today announced the appointment of Dean Burch of Tucson, Ariz., as Counsellor to the President with Cabinet rank. Mr. Burch, together with Counsellors Anne Armstrong and Bryce Harlow, will advise the President on a broad range of policy questions.

Mr. Burch has been Chairman of the Federal Communications Commission since 1969. He was born on December 20, 1927, in Enid, Okla. Mr. Burch served in the U.S. Army from 1946 to 1948. He received his law degree from the University of Arizona in 1953. Following

graduation, Mr. Burch served as assistant attorney general of Arizona from 1953 to 1954. He served as legislative assistant to Senator Barry Goldwater from 1955 until 1959, when he joined the law firm of Dunseath, Stubbs, and Burch, as a partner. Mr. Burch was chairman of the Republican National Committee in 1964-65. He left his law firm in September of 1969 when he was appointed by the President to the FCC.

Mr. Burch is married to the former Patricia Meeks. They have three children and reside in Washington, D.C.

NOTE: The announcement was released at Key Biscayne, Fla.

United States Ambassador to Peru

*Announcement of Intention To Nominate
Robert W. Dean. February 15, 1974*

The President today announced his intention to nominate Robert W. Dean as Ambassador to Peru. Mr. Dean, a Foreign Service officer of Class one, presently serving as Deputy Chief of Mission, Mexico City, would succeed Taylor G. Belcher, who is retiring from the Foreign Service.

He was born on May 25, 1920, in Hinsdale, Ill. Mr. Dean received a B.A. in 1948 and a M.A. in 1952 from the University of Chicago. He served with the United States Navy from 1945 to 1946. From 1942 to 1945, he was a clerk, then economic analyst in São Paulo. He was with the Institute of International Education in New York during 1948-49. He entered the Department of State as an Administrative Assistant in 1949 and in 1950 was appointed a Foreign Service officer. From 1950 to 1952, he was a resident officer, Kitzinger/HICOG, and from 1952 to 1954 a Consular Officer, Belem.

Mr. Dean from 1954 to 1957 was a Political Officer, Rio de Janeiro, and from 1957 to 1959, Chief of South American Branch, Division of Research for American Republics, in the Department. In 1959 he became Chief of the Inter-American Political Intelligence Division, and in 1961 he was on detail to the Department of Defense. He attended the National War College during 1962-63. In 1963-65 he served as Principal Officer, Brasília, and from 1965 to 1969 he was Deputy Chief of Mission, Santiago. He was Country Director for Brazilian Affairs from 1969 to 1971, when he became Deputy Chief of Mission, Mexico City. He is fluent in Portuguese and Spanish.

Mr. Dean is married to the former Doris Wilkins and they have two children.

NOTE: The announcement was released at Key Biscayne, Fla.

83. On February 25, 1974 Herbert Kalmbach pleaded guilty to charges that he had engaged in illegal activities during his solicitations of campaign contributions in 1970, including the promise of appointment to an ambassadorship in return for a campaign contribution. Kalmbach agreed to make full and truthful disclosure of all relevant information and documents in his possession and to testify as a witness for the United States in cases in which he may have relevant information.

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83.5	Letter from Leon Jaworski to James H. O'Connor, Herbert Kalmbach's attorney, February 13, 1974, <u>United States v. Kalmbach</u>	957

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
	)	Crim. No.
v.	)	(18 U.S.C. §2; 2 U.S.C.
	)	§242(a) and §252(b))
HERBERT W. KALMBACH,)	
	)	I N F O R M A T I O N
Defendant.)	

The Special Prosecutor charges:

1. On or about November 3, 1970, pursuant to the Constitution and laws of the United States and the laws of the several states, a general election was held at which candidates for the United States Senate and House of Representatives were voted for.

2. From on or about March 1, 1970, to on or about December 31, 1970, there existed in the District of Columbia, a political committee as defined by §241(c) of Title 2, United States Code, which committee willfully accepted contributions and willfully made expenditures for the purpose of influencing the election of candidates of the Republican Party for the United States Senate and House of Representatives in the aforesaid general election in, among others, the following states: Alaska, Connecticut, Florida, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, Nevada, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Utah, Vermont and Wyoming, at a time when a chairman and treasurer of said committee had not yet been chosen as required by Section 242(a) of Title 2, United States Code.

- 2 -

3. From on or about March 1, 1970, to on or about December 31, 1970, in the District of Columbia and elsewhere, the defendant HERBERT W. KALMBACH did knowingly and willfully aid, abet, counsel, induce and procure the commission by the aforesaid committee of the offense set forth in paragraph 2 of this information and did cause the aforesaid committee to accept contributions and make expenditures at a time when a chairman and treasurer of that committee had not yet been chosen.

All in violation of Section 252(b) of Title 2 and Section 2 of Title 18, United States Code.

LEON JAWORSKI
Special Prosecutor

CRIMINAL DOCKET

United States District Court for the District of Columbia

SITICA, C.J.

PARTIES UNITED STATES VS ERNEST H. KALMBACH DOB	ATTORNEYS Office of Watergate Special U.S. Attorney/Prosecutor, DC Dept of Justice, Thomas H. Maher Charles F. O'Rourke	D CRIMINAL NO. 74-86 FONE
	James H. O'Connor Federal Building Phoenix, Arizona	CHARGE 16 USC 2; 2 USC 242(c) 252(b) Violation of Federal Corrupt Practices Act; Promise of Employment or other benefit to polit local activities, 18 USC 600
		DATE FILED 2-27-74 PR w/cnds

DATE	PROCEEDINGS
Feb 25	INFORMATION FILED (2 Counts)
Feb 25	Appearance of James H. O'Connor, Esq. as counsel for deft. Filed.
Feb 25	INFORMATION, Waiver of indictment, together with letter dated 2-13-74 from Leon Jaworski, Watergate Special Prosecutor, to James H. O'Connor, Esq. FILED IN OPEN COURT; ARRAIGNED: PLEA GUILTY entered to information; referred: deft. permitted to remain on personal recognizance pending sentencing upon following conditions: (1) Travel is restricted to US; (2) Passport, if any, must be surrendered to the Court immediately; (3) Deft. must report by phone to DC Bail Agency at least once a week; and (4) counsel for deft will assure deft's appear in court as required. SITICA, C.J. Rep: J. Maher J. O'Connor, Atty.
Feb 26	TRANSCRIPT of Proceedings of 2/25/74; Pages 1 - 18; Court copy; Rep: Jack Maher
Feb 27	ORDER granting release on Personal Recognizance pending sentencing;

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
v.	)	Crim. No. _____
	)	(18 U.S.C. §500)
HERBERT W. KALMBACH,)	
	)	INFORMATION
Defendant.)	

The Special Prosecutor charges:

On or about the 16th day of September, 1970, the defendant HERBERT W. KALMBACH promised employment, position, work, compensation and other benefit provided for and made possible by an Act of Congress, to wit, an appointment as United States Ambassador to a European country, to one J. Fife Symington, Jr. as consideration, favor, and reward for political activity and for support of a candidate and political party in an election, to wit, for the making of a political contribution of \$100,000 by J. Fife Symington, Jr. and others for the support of Republican Senatorial and Gubernatorial candidates in 1970 federal and state elections and the Republican Presidential and Vice Presidential candidates in the 1972 federal election, all in violation of §500, Title 18, United States Code.

LEON JAWORSKI
Special Prosecutor

CRIMINAL DOCKET

United States District Court for the District of Columbia

SIRICA, C.J.

PARTIES		ATTORNEYS	D	CRIMINAL NO
UNITED STATES		Office of Watergate Special U.S. Attorney, Prosecutor, US Dept of Justice, Thomas F. McFriede Charles E. C. Ruff	74-87	
VS.			ENONE	
ROBERT W. KALMBACH				
DOB		James H. O'Connor Federal Building Phoenix, Arizona	CHARGE	18 USC 2; 2 USC 242(a) 252(b) Violation of Federal Corrupt Practices Act; Promise of Employment or other benefit for political activity 18 USC 600
			DATE FILED	BOND
			2-27-74	PR w/conds
PROCEEDINGS				
Feb	25	INFORMATION FILED (2 Counts)		
Feb	25	Appearance of James H O'Connor, Esq. as counsel for deft.		
Feb	25	INFORMATION FILED IN OPEN COURT.		
Feb	25	LETTER dated 2-13-74 from Leon Jaworski, Watergate Special Prosecutor to James H. O'Connor, Esq. FILED IN OPEN COURT.		
Feb	25	ARRAIGNED: FLEA GUILTY entered to information; referred deft. permitte to remain on personal recognizance pending sentence upon following conditions: (1) Travel is restricted to US; (2) Passport, if any, must be surrendered to Court immediately; (3) Deft. must report by phone to DC Bail Agency at least once a week; and (4) Counsel for deft will assure deft's appear in Court as required. SIRICA, C.J. Rep: J. Maher J. O'Connor, Atty.		
Feb	26	TRANSCRIPT of Proceedings of 2/25/73; pages 1 - 18; Court copy; Rep-Jack Maher.		

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

February 13, 1974

James H. O'Connor, Esq.
O'Connor, Cavanagh, Anderson, Westover,
Killingsworth & Beshears
Suite 1800 First Federal Savings Building
3003 North Central Avenue
Phoenix, Arizona 85012

Dear Mr. O'Connor:

On the understandings specified below, the United States will accept guilty pleas from Herbert W. Kalmbach to a one-count information charging violation of 2 U.S.C. §252(b) and a one-count information charging a violation of 18 U.S.C. §600. This will dispose of pending or potential charges based on matters presently known to this office and specifically including charges relating to the so-called Watergate cover-up, contributions from the milk producers, other contributions from persons seeking ambassadorial appointments and any charges arising out of grand jury testimony heretofore given by Mr. Kalmbach.

The understandings are that Mr. Kalmbach will enter his pleas in the District Court for the District of Columbia, that he will waive indictment on the 2 U.S.C. §252(b) [felony] charge, that he will waive objection to venue on the 18 U.S.C. §600 charge, and that full and truthful disclosure will be made of all relevant information and documents in Mr. Kalmbach's possession, which disclosure is to commence immediately after the entering of the pleas of guilty. Ultimately, of course, Mr. Kalmbach may be required to testify as a witness for the United States in cases with respect to which he may have relevant information. It is further understood that in other grand jury indictments or other charges brought by the United States and the Special Prosecutor, Mr. Kalmbach may be named as an unindicted co-conspirator.

- 2 -

It is further understood that the United States will make no recommendation concerning Mr. Kalmbach's sentencing but will bring to the attention of the pre-sentencing investigators, information in its possession relating to Mr. Kalmbach and to the extent of his cooperation with the United States. Such cooperation will also be brought to the attention of a court or professional disciplinary body, if requested.

- This disposition will not bar prosecution for any false testimony given hereafter, nor to prosecution for any serious offenses committed by Mr. Kalmbach of which this office is presently unaware.

Enclosed are copies of two draft informations as discussed in our meeting last week.

Sincerely,

LEON JAWORSKI
Special Prosecutor

84. On March 1, 1974 John Mitchell, H. R. Haldeman, John Ehrlichman, Charles Colson, Robert Mardian, Kenneth Parkinson and Gordon Strachan were indicted for conspiracy relating to the Watergate break-in. Mitchell, Haldeman, Ehrlichman and Strachan were also indicted for obstruction of justice and for making false statements to the Grand Jury or the Court or agents of the FBI.

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84.1 Watergate Special Prosecution Force press release, March 1, 1974.....	960

WATERGATE SPECIAL PROSECUTION FORCE
1425 K Street, N.W.
Washington, D.C. 20005

FOR IMMEDIATE RELEASE

MARCH 1, 1974

THE FOLLOWING INDICTMENT WAS HANDED DOWN BY A FEDERAL
GRAND JURY IN WASHINGTON TODAY:

NAMES:

Charles Colson, 42, McLean, Virginia
John Ehrlichman, 48, Seattle, Washington
Harry R. Haldeman, 47, Los Angeles, California
Robert C. Mardian, 50, Phoenix, Arizona
John Mitchell, 60, New York, New York
Kenneth W. Parkinson, 46, Washington, D.C.
Gordon Strachan, 30, Salt Lake City, Utah

CHARGES:

All defendants were charged with one count of conspiracy
(Title 18, USC, §371).

The following defendants were indicted on additional
charges:

MITCHELL: One count of violation of 18, USC, §1503 (Obstruction of Justice), two counts of violation of 18, USC, §1623 (Making false declaration to Grand Jury or Court), one count of violation of 18, USC, §1621 (Perjury) and one count of violation of 18, USC, §1001 (Making false statement to agents of the Federal Bureau of Investigation).

EHRLICHMAN: One count of violation of 18, USC, §1503 (Obstruction of Justice), one count of violation of 18, USC, §1601 (Making false statement to agents of the Federal Bureau of Investigation) and two counts of violation of 18, USC, §1623 (Making false declaration to Grand Jury or Court).

HALDEMAN: One count of violation of 18, USC, §1503 (Obstruction of Justice), three counts of violation of 18, USC, §1621 (Perjury).

STRACHAN: One count of violation of 18, USC, §1503 (Obstruction of Justice), one count of violation of 18, USC, §1623 (Making false declaration to Grand Jury or Court).

PERJURY:

\$321. Conspiracy. Carries a maximum penalty of five years imprisonment or fine of \$5,000, or both.

\$1502. Obstruction of Justice. Carries a maximum penalty of five years imprisonment or a fine of \$5,000, or both.

\$1601. Making false statement to agents of the Federal Bureau of Investigation. Carries a maximum penalty of five years imprisonment or a fine of \$10,000, or both.

\$1621. Perjury. Carries a maximum penalty of five years imprisonment or a fine of \$2,000, or both.

\$1623. Making false declaration to Grand Jury or Court. Carries a maximum penalty of five years imprisonment or a fine of \$10,000, or both.

A COPY OF THE INDICTMENT AND COPIES OF THE APPROPRIATE STATUTES ARE ATTACHED TO THIS FACT SHEET.

THE INDICTMENT WAS HANDED DOWN BY THE GRAND JURY IMPANELLED JUNE 5, 1972.

85. On March 7, 1974 John Ehrlichman, Charles Colson, G. Gordon Liddy, Bernard Barker, Felipe DeDiego and Eugenio Martinez were indicted for conspiracy to violate civil rights of citizens in the break-in of Dr. Lewis Fielding's office. Ehrlichman was also charged with making false statements to the FBI and false declarations before the grand jury.

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85.1 Watergate Special Prosecution Force press release, March 7, 1974.....	964

WATERGATE SPECIAL PROSECUTION FORCE
1425 K Street N.W.
Washington, D.C. 20005

FOR IMMEDIATE RELEASE

MARCH 7, 1974

THE FOLLOWING INDICTMENT WAS HANDED DOWN BY A
FEDERAL GRAND JURY IN WASHINGTON TODAY:

NAMES:

John Ehrlichman, 48, Seattle, Washington
Charles Colson, 42, McLean, Virginia
G. Gordon Liddy, 43, Oxon Hill, Maryland
Bernard L. Barker, 56, Miami, Florida
Felipe De Diego, 45, Miami, Florida
Eugenio Martinez, 51, Miami, Florida

CHARGE:

Each defendant was charged with a single count
of violation of Title 18, USC, Section 241,
Conspiracy against rights of citizens. *

Ehrlichman was also charged with one count of
violation of Title 18, USC, Section 1001, mak-
ing false statement to agents of the Federal
Bureau of Investigation, and three counts of
violation of Title 18, USC, Section 1623, mak-
ing false declaration to grand jury or court.

*Named as co-conspirators, but not indicted,
were the following: Egil Krogh, Jr., E. Howard
Hunt, Jr., and David R. Young. Krogh pleaded
guilty on November 30, 1973, to a charge of
violation of Title 18, USC, Section 241. Hunt
was granted immunity by order of U.S. District
Court Chief Judge John J. Sirica on March 28,
1973. Young was granted immunity by Chief Judge
Sirica on May 16, 1973.

PENALTIES:

SECTION 241. Fine of not more than \$10,000 or
imprisonment for not more than 10 years, or
both.

SECTION 1001. Fine of not more than \$10,000
or imprisonment not more than five years, or
both.

SECTION 1623. Fine of not more than \$10,000 or
imprisonment not more than five years, or both.

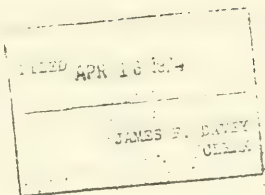
A COPY OF THE INDICTMENT AND TITLE 18, USC, SEC-
TIONS 241, 1001 AND 1623, ARE ATTACHED. INDICT-
MENT HANDED DOWN BY GRAND JURY EMANELLED AUGUST
13, 1973.

86. On March 12, 1974 Jaworski wrote to St. Clair requesting access to taped conversations and related documents to be examined and analyzed as the Government prepares for trial in United States v. Mitchell. Jaworski stated that the evidence sought was material and relevant either as proof of the Government's case or as possible exculpatory material required to be disclosed to the defendants.

	Page
86.1 Letter from Leon Jaworski to James St. Clair, March 12, 1974, attached as Exhibit A to Leon Jaworski's April 16, 1974 affidavit in <u>United States v. Mitchell</u> , Crim. No. 74-110.....	966

UNITED STATES DEPARTMENT OF JUSTICE
1425 H STREET, N.W.
WASHINGTON, D.C. 20530

March 12, 1974



James D. St. Clair, Esquire
Special Counsel to the President
The White House
Washington, D. C.

Dear Mr. St. Clair:

Now that an indictment has been returned concerning the Watergate cover-up, it is necessary to request access to certain taped conversations and related documents that must be examined and analyzed as the Government prepares for trial. These conversations and documents, identified on the basis of the evidence now known to us, are listed in the enclosed schedule. You indicated in your letters to me of February 13, and February 27, 1974, that you would consider such requests on a case-by-case basis.

As you know, 27 recordings previously were requested in an effort to assure that the Watergate investigation would be as thorough and as fair as possible. Although the White House did not see fit to make these recordings available for this purpose, I hope that you will understand that this present request is dictated by a different and, if anything, more important reason. Information now available to us indicates that each of the conversations shown on the enclosed schedule contains or is likely to contain evidence that will be relevant and material to the trial of the seven individuals who have been indicted, either as proof of the Government's case or as possibly exculpatory material that must be disclosed to the defense under Brady v. Maryland. (Of course, if you inform us that certain of the requested conversations are irrelevant to the trial and you permit someone in this office, as you have in the past, to verify this by listening to them, there will be no need for you to produce those conversations, except as otherwise may be required by a court upon request of defendants.)

EXHIBIT A

In a spirit of cooperation, I made available to you in my letter of January 22, 1974, the information that leads us to believe that the recordings requested in that letter are important. Similar information for a few additional recordings that were not discussed in that letter, but are now requested, is footnoted on the enclosed schedule. .

Since most of the requested tapes were initially sought many weeks ago, I assume that the task of locating and examining the material now requested is largely complete. Moreover, if litigation relating to this material becomes necessary, it would be best for everyone concerned that it be initiated promptly in order to avoid any trial delay. Accordingly, I would appreciate a definitive response to this letter at your earliest convenience and, in any event, no later than March 19. Although early production of the requested materials would greatly ease the problems of trial preparation, I would deem it a sufficient response to this letter if you assure us in writing that the President will provide the materials prior to June 15, 1974. If the President wishes to withhold any of the recordings on the ground of irrelevance, I would ask that arrangements be made so that we can complete our review of those recordings prior to June 15, 1974.

Sincerely,

LEON JAWORSKI
Special Prosecutor

Enclosure

87. On March 15, 1974 the Special Prosecutor served a subpoena on the White House calling for certain materials involving neither the Watergate cover-up nor the Fielding break-in. On March 29, 1974 the White House agreed to comply with the subpoena.

	Page
87.1 <u>New York Times</u> , March 22, 1973, 1, 26.....	970
87.2 <u>New York Times</u> , March 30, 1974, 1, 14.....	971

JK 5167

CRS MAIN FILE COPY
NEW YORK TIMES

MAR 22 1974

A SUBPOENA SEEKS
MORE NIXON FILES

Subpoena Requests More Nixon Files

Jaworski Reports Writ Was
Served on Friday—Reply
Called For by MondayBy R. W. APPLE Jr.
Special to The New York Times

WASHINGTON, March 21—Leon Jaworski, the special Watergate prosecutor, disclosed today that he had subpoenaed additional documents from the White House files.

The subpoena was served last Friday and must be answered by Monday. James D. St. Clair, the special White House counsel on Watergate matters, said that a response was under consideration, without indicating what it might be.

If President Nixon and his aides decide to fight the subpoena, a constitutional confrontation similar to the one provoked last year by Mr. Jaworski's predecessor, Archibald Cox, could be set in motion.

Mr. Cox was dismissed as a result of the 1973 confrontation, but Gerald L. Warren, the deputy Presidential press secretary, said this morning that Mr. Nixon was giving no consideration to the idea of dismissing Mr. Jaworski.

Neither Mr. Warren nor Mr. Jaworski would provide details on the number or subjects of documents covered by the subpoena. Mr. Jaworski told newsmen, however, that there could be further subpoenas "relating to areas under investigation."

An official of the prosecutor's office said that the subpoena involved neither the Watergate cover-up nor the

Continued From Page 1, Col. 7

break-in at the office of Daniel Ellsberg's former psychiatrist. Presumably, therefore, the subpoena dealt with one of the other areas under investigation by the three Watergate grand juries—the International Telephone and Telegraph case, the milk fund case, political contributions and the erasure of 18 minutes from one of the White House tapes.

On Feb. 14, Mr. Jaworski wrote to Senator James O. Eastland, Democrat of Mississippi who is chairman of the Senate Judiciary Committee, complaining that the President had refused to give him material that he needed for his Watergate investigation.

The material at issue included 27 tapes relating to the Watergate cover-up as well as political donations of milk producers and the activities of the White House's so-called "plumbers" unit.

The subpoena may deal with some or all of this data.

Mr. St. Clair, appearing on the National Broadcasting Company's "Today" program, did not clear up the confusion.

"We have recently received a subpoena," he said. "I don't think it would cover material he [Mr. Jaworski] has recently been denied. But this would be, maybe, a quibble. Let's say we recently have received a subpoena."

In any event, Mr. Jaworski's action will undercut one of the principal debating points Mr. Nixon has used in his recent public campaign to re-establish his credibility.

The President has repeatedly defended his refusal to yield to a subpoena from the House

Judiciary Committee, which is arguing that Mr. Jaworski had investigated impeachment, by arguing that Mr. Jaworski had all the material he needed and noting that the House group had received everything Mr. Jaworski had.

Mr. Jaworski never said that he had all the materials he needed. Mr. Nixon apparently based his comments on Mr. Jaworski's comment, in an interview with The New York Times on Feb. 26, that his office knew the full story of the Watergate case.

His subpoena indicates that, even if he knows the full story, he does not feel he has sufficient material to frame all the indictments.

At the regular White House news briefing this morning, Mr. Warren conceded that Mr. Nixon knew of the subpoena on Tuesday night, when he conducted a nationally telecast question-and-answer session in Houston. In that case, Mr. Warren was asked, why did the President not mention it?

Mr. Warren replied that the President was not asked a direct question on the subject. The deputy press secretary

was also asked why his superior, Ronald L. Ziegler, flatly denied the receipt of any new subpoena when questioned yesterday by Adam Clymer, the White House correspondent of The Baltimore Sun. Mr. Warren said he did not know.

Ziegler Comment Noted

Mr. Jaworski's new subpoena was the first directed at the President by the special prosecutor's office since last July, when Mr. Cox subpoenaed tapes of nine Presidential conversations. Mr. Nixon balked and a legal struggle ensued, with the White House losing both in the District Court and the Court of Appeals.

At that juncture, the President attempted to work out a compromise. Mr. Cox resisted, and was dismissed. In the uproar that followed, Mr. Nixon agreed to supply the tapes "voluntarily," with the proviso that he set no precedent.

Thus the legal issue of Presidential vulnerability to a subpoena did not reach the Supreme Court. If Mr. Nixon again refuses to honor the subpoena, the constitutional struggle could resume.

Continued on Page 26, Column 5

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NEW YORK TIMES

p. 1

MAR 30 1974

WHITE HOUSE YIELDS DATA SUBPOENAED BY JAWORSKI IN POLITICAL-GIFT INQUIRY

FIGHT IS AVERTED

But Talks Continue on Impeachment Panel's Plea for Documents

By JOHN HERBERS

Special to The New York Times

WASHINGTON, March 29—The White House agreed today to surrender all the materials subpoenaed March 15 by the special Watergate prosecutor, Leon Jaworski.

President Nixon, in deciding not to fight the subpoena, made an important concession in his efforts to limit, on the ground of executive privilege, the number of documents and tape recordings he turns over to the investigations of alleged wrongdoing in his Administration.

Still pending was the dispute between Mr. Nixon and the House Judiciary Committee, which asked for additional tapes and documents for its impeachment inquiry. However, lawyers for the two sides were negotiating on the committee's request, and there were some indications that a compromise might soon be reached.

New Subpoenas Expected

The materials covered by the Jaworski subpoena pertained to documents concerning political contributions, one of the areas still under grand jury investigation. Mr. Jaworski is expected to issue further subpoenas

for materials in the milk price controversy and the International Telephone and Telegraph Corporation antitrust case.

There was also the possibility that he would subpoena additional material to be used in the prosecution of defendants indicted in the cover-up of the Watergate burglary.

Ronald L. Ziegler, the White House press secretary, informally disclosed the breakthrough in the constitutional struggle as if it were a routine decision that had never been in doubt.

Yielding of Materials

He wandered into the White House press room this morning and, in the course of chatting with a small group of reporters, said that James D. St. Clair, the President's chief attorney for Watergate matters, had told him "all of the materials requested" by Mr. Jaworski would be turned over later in the day. Today was the deadline for surrendering the material.

A spokesman for Mr. Jaworski said that the materials were delivered to the prosecutor's office in a brown paper package at 5:15 P.M.

Mr. Jaworski had issued the subpoena only after he was

Continued on Page 14, Column 1

White House Yields to Jaworski On Data in Political-Gift Inquiry

Continued From Page 1, Col. 8

unable to obtain the materials voluntarily in long negotiations with White House lawyers. President Nixon had repeatedly argued that Mr. Jaworski had all the materials he needed for the Watergate and other investigations.

Last July, Mr. Nixon defied subpoenas for tape recordings from Mr. Jaworski's predecessor, Archibald Cox, who took the President to court and won an order, approved by the United States Court of Appeals for the District of Columbia Circuit, requiring that the tapes be surrendered for judicial review.

Mr. Nixon ousted Mr. Cox but then surrendered the tapes, and for a time it appeared that he would honor all requests for White House materials.

But, as the demands mounted in recent weeks, he said that he would resist efforts to obtain large volumes of material on the same ground that he had resisted the original Cox subpoena — that the confidentiality of the Presidency would be seriously compromised, making it impossible for future Presidents to receive candid advice in private.

Mr. Ziegler, in his brief press room appearance today, did not say why the President had agreed to meet the demands of Mr. Jaworski. However, many Republicans in Congress have recently warned the President and his assistants that refusal

to surrender documents, either to the courts or to the House Judiciary Committee, would increase the chances of Mr. Nixon's impeachment and conviction.

Neither Mr. Jaworski's office nor the White House has disclosed the contents of the subpoena honored today. However, Mr. Ziegler said that no tape recordings were involved, and informed sources said that the subpoena sought a number of documents pertaining to campaign contributions to Mr. Nixon, including those made by persons subsequently appointed as Ambassadors.

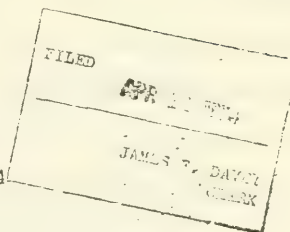
Herbert W. Kalmbach, the President's personal attorney, who was one of his chief fund raisers, pleaded guilty on Feb. 25 to violating the Federal Corrupt Practices Act by promising an Ambassador a better assignment in return for a \$100,000 contribution.

President Nixon has said that ambassadorships in his Administration were based on the qualifications of the persons involved and were never for sale.

88. On April 11, 1974 Jaworski wrote to St. Clair informing him that in view of the failure to produce the materials requested by Jaworski in his letter of March 12, 1974 Jaworski would seek a subpoena for the materials deemed necessary for trial in United States v. Mitchell.

	Page
88.1 Letter from Leon Jaworski to James St. Clair, April 11, 1974, attached as Exhibit B to Leon Jaworski's April 16, 1974 affidavit in <u>United States v. Mitchell</u> , Crim. No. 74-110.....	974

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
400 K Street, N.W.
Washington, D.C. 20005



April 11, 1974

James D. St. Clair, Esq.
Special Counsel to the President
The White House
Washington, D. C.

Dear Mr. St. Clair:

On March 12, 1974, I wrote to you requesting access to certain taped conversations and related documents that must be examined and analyzed as the Government prepares for trial in United States v. Mitchell. If the President declines to produce these materials, which we deem necessary for trial, I am compelled by my responsibilities to seek appropriate judicial process. As I indicated in my letter, any judicial proceedings, if they are necessary, must be initiated promptly in order to avoid unnecessary trial delays.

I have conferred with you several times during the last month about this matter. I have delayed seeking a subpoena in the hope that the President would comply with our request voluntarily. Indeed, I have sought no more at this time than an assurance that the materials would be provided sufficiently in advance of trial to allow thorough preparation. Your latest communication to this office was that we would receive any materials the President produces to the Committee on the Judiciary of the House of Representatives. As to other materials requested by my letter, you have said you would not consider our request until the President decided what to provide the House Judiciary Committee. I have emphasized repeatedly that our request is in no way tied to the requests of the House Judiciary Committee. The requests are distinguishable both factually and legally. Nevertheless, you have

EXHIBIT B

refused to consider them separately, and you have been unable to tell us the criteria that will govern the President's response to our request or to assure us when we will receive a definitive response.

Under these circumstances, in accordance with my responsibilities to secure a prompt and fair trial for the Government and the defendants in United States v. Mitchell, I am obliged to seek a subpoena for those materials we deem necessary for trial. Accordingly, on Tuesday, April 16, we will apply to Judge Sirica for a trial subpoena pursuant to Rule 17 (c) of the Federal Rules of Criminal Procedure.

Sincerely,

LEON JAWORSKI
Special Prosecutor

89. On April 11, 1974 the House Judiciary Committee issued a subpoena to the President for tape recordings and documents relating to specified conversations which took place in February, March and April 1973 between the President and Haldeman, Ehrlichman, Dean, Kleindienst and Petersen.

	Page
89.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, April 11, 1974.....	978

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon

Richard M. Nixon, President of the United States of America, or any
subordinate officer, official or employee with custody or control of
the things described in the attached schedule,

to be and appear before the Committee on the Judiciary

~~Committee~~ of the House of Representatives of the United States, of which the Hon.

Peter W. Rodino, Jr. is chairman, and to bring with
him the things specified in the schedule attached hereto and made a part
hereof,

in their chamber in the city of Washington, on or before

April 25, 1974, at the hour of 10:00 A.M.

produce and deliver said things to said Committee, or their
then and there to ~~testify~~ ~~relating matters before the Committee~~ ~~and~~ ~~be~~
duly authorized representative, in connection with the Committee's investi-
~~gate~~ ~~to depart without leave of said Committee~~ gation authorized and directed by
H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

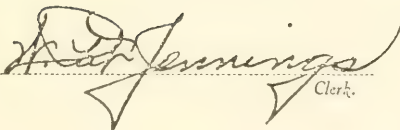
of the United States, at the city of Washington, this

11th day of April, 1974.

Peter W. Rodino, Jr.

Chairman.

Attest:


Clerk.

SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA DATED APRIL 11, 1974

All tapes, dictabelts, or other electronic recordings, transcripts, memoranda, notes or other writings or things relating to the following conversations:

1. Certain conversations between the President and Mr. Haldeman or Mr. Ehrlichman or Mr. Dean in February, March and April, 1973, as follows:

(a) Conversations between the President and Mr. Haldeman on or about February 20, 1973, that concern the possible appointment of Mr. Magruder to a government position;

(b) Conversations between the President, Mr. Haldeman and Mr. Ehrlichman on or about February 27, 1973, that concern the assignment of Mr. Dean to work directly with the President on Watergate and Watergate-related matters;

(c) Conversations between the President and Mr. Dean on March 17, 1973, from 1:25 to 2:10 p.m. and March 20, 1973, from 7:29 to 7:43 p.m.

(d) Conversations between the President and Mr. Ehrlichman on March 27, 1973 from 11:10 a.m. to 1:30 p.m., and on March 30, 1973, from 12:02 to 12:18 p.m.; and

(e) Conversations between the President and Mr. Haldeman and the President and Mr. Ehrlichman during the period April 14 through 17, 1973, as follows:

April 14

8:55 - 11:31 a.m.	Meeting among the President, Mr. Ehrlichman and Mr. Haldeman
1:55 - 2:13 p.m.	Meeting between the President and Mr. Haldeman
2:24 - 3:55 p.m.	Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

89.1 SCHEDULE OF THINGS REQUIRED TO BE PRODUCED PURSUANT TO SUBPOENA

5:15 - 6:45 p.m.	Meeting among the President, Mr. Ehrlichman and Mr. Haldeman
11:02 - 11:16 p.m.	Telephone conversation between the President and Mr. Haldeman
11:22 - 11:53 p.m.	Telephone conversation between the President and Mr. Ehrlichman

April 15

10:35 - 11:15 a.m.	Meeting between the President and Mr. Ehrlichman
2:24 - 3:30 p.m.	Meeting between the President and Mr. Ehrlichman
3:27 - 3:44 p.m.	Telephone conversation between the President and Mr. Haldeman
7:50 - 9:15 p.m.	Meeting among the President, Mr. Haldeman and Mr. Ehrlichman
10:16 - 11:15 p.m.	Meeting among the President, Mr. Ehrlichman and Mr. Haldeman

April 16

12:08 - 12:23 a.m.	Telephone conversation between the President and Mr. Haldeman
8:18 - 8:22 a.m.	Telephone conversation between the President and Mr. Ehrlichman
9:50 - 9:59 a.m.	Meeting among the President, Mr. Haldeman and Mr. Ehrlichman
10:50 - 11:04 a.m.	Meeting among the President, Mr. Haldeman and Mr. Ehrlichman
12:00 - 12:31 p.m.	Meeting among the President, Mr. Ehrlichman and Mr. Haldeman
3:27 - 4:02 p.m.	Meeting between the President and Mr. Ehrlichman (Mr. Ziegler present from 3:35 - 4:04 p.m.)

89.1 SCHEDULE OF THINGS REQUIRED TO BE PRODUCED PURSUANT TO SUBPOENA

April 16 (Continued)

9:27 - 9:49 p.m. Telephone conversation between
the President and Mr. Ehrlichman

April 17

9:47 - 9:59 a.m. Meeting between the President
and Mr. Haldeman

12:35 - 2:30 p.m. Meeting among the President,
Mr. Haldeman and Mr. Ehrlichman
(Mr. Ziegler present from 2:10 -
2:17 p.m.)

2:39 - 2:40 p.m. Telephone conversation between
the President and Mr. Ehrlichman

3:50 - 4:35 p.m. Meeting among the President, Mr.
Haldeman and Mr. Ehrlichman

5:50 - 7:14 p.m. Meeting among the President, Mr.
Haldeman and Mr. Ehrlichman
(Mr. Rogers present from 5:20 -
6:19 p.m.)

2. Conversations between the President and Mr.
Kleindienst and the President and Mr. Petersen during the period
from April 15 through 18, 1973, as follows:

April 15

10:13 - 10:15 a.m. Telephone conversation between
the President and Mr. Kleindienst

1:12 - 2:22 p.m. Meeting between the President
and Mr. Kleindienst

3:48 - 3:49 p.m. Telephone conversation between
the President and Mr. Kleindienst

4:00 - 5:15 p.m. Meeting among the President,
Mr. Kleindienst and Mr. Petersen

8:14 - 8:18 p.m. Telephone conversation between
the President and Mr. Petersen

89.1 SCHEDULE OF THINGS REQUIRED TO BE PRODUCED PURSUANT TO SUBPOENA

April 15 (Continued)

8:25 - 8:26 p.m.	Telephone conversation between the President and Mr. Petersen
9:39 - 9:41 p.m.	Telephone conversation between the President and Mr. Petersen
11:45 - 11:53 p.m.	Telephone conversation between the President and Mr. Petersen

April 16

1:39 - 3:25 p.m.	Meeting between the President and Mr. Petersen (Mr. Ziegler present from 2:25 - 2:52 p.m.)
8:58 - 9:14 p.m.	Telephone conversation between the President and Mr. Petersen

April 17

2:46 - 3:49 p.m.	Meeting between the President and Mr. Petersen
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April 18

2:50 - 2:56 p.m.	Telephone conversation between the President and Mr. Petersen
6:28 - 6:37 p.m.	Telephone conversation between the President and Mr. Petersen.

90. On April 12, 1974 Jaworski wrote to Senator Charles Percy of the Senate Judiciary Committee stating that the government was obligated to produce at trial the material requested in Jaworski's March 12, 1974 letter respecting the trial of United States v. Mitchell, and that the failure of the White House to produce other requested evidence was impeding grand jury investigations of matters unrelated to the Water-gate cover-up.

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90.1 Letter from Leon Jaworski to Charles Percy, April
12, 1974, Congressional Record S7103-04..... 984

May 6, 1974

CONGRESSIONAL RECORD—SENATE

S 7103

Japan, India, Indonesia, and Nigeria. An almost equally interesting case can be made that in doing so, particular attention should be placed on effectively involving small farmers in the production effort. There is evidence that small farmers, when they have effective access to agricultural inputs as well as health and education services, engage in labor-intensive agriculture and generally average considerably higher yields per acre than do large farmers.

Concentrating efforts on expanding food production in the poor countries could also ease upward pressure on world food prices, create additional employment in countries where continuously rising unemployment poses a serious threat to political stability, raise income, improve nutrition for the poorest portion of humanity—the people living in rural areas of the developing countries—and it could also be a very important factor in significantly reducing birth rates.

ASSURED FOOD SUPPLY WOULD SLOW POPULATION GROWTH

The prospect of a emerging chronic global scarcity of food as a result of growing pressures on available food resources underlines the need to stabilize and eventually halt population growth in as short a period of time as possible. One can conceive of this occurring in the industrial countries, given recent demographic trends.

In the poor countries, however, it will be much more difficult to achieve population stability within an acceptable time frame, at least as things are going now. For one thing, the historical record indicates that birth rates do not usually decline unless certain basic social needs are satisfied—a reasonable standard of living, an assured food supply, a reduced infant mortality rate, literacy, and health services—which provide the basic motivation for smaller families.

In short it is in the self-interest of affluent societies to launch a major additional effort directed at helping developing countries to step up food production and generally accelerate the development of the rural areas, which contain the great majority of the world's people and most of the very poor. This effort would not only increase food production at a relatively low cost, but would also meet the basic social needs of people throughout the world. The latter is a prerequisite in lowering birth rates. Population-induced pressures on the global food supply will continue to increase if substantial economic and social progress is not made. Populations that double every 24 years—as many are doing in your nations—multiply eightfold in scarcely 75 years!

There is a moral imperative to take action to reduce the impact of the present food scarcity and reduce the likelihood of future disaster. The point was forcefully made by United by Chancellor Willy Brandt of West Germany in his first address before the U.N. General Assembly: "Morally it makes no difference whether a man is killed in war or is condemned to starve to death by the indifference of others."

WHO DETERMINES RELEVANCY OF REQUESTED WATERGATE EVIDENCE?

Mr. PERCY. Mr. President, over the years and the President's lawyer, Mr. St. Clair, and his Chief of Staff, Mr. Haig, clearly indicated what has seemed evident for many months. Despite the fact that the President and former members

of his staff are the subject of investigations into alleged wrongdoing, the White House nonetheless is reserving to itself the right to determine what is relevant to these investigations. For instance, General Haig said Sunday that—

The President has now put out for public assessment what we consider to be all of the relevant information on the Watergate story.

He later stated that they have released information "which our lawyers and which the President considers covers the full gamut of the Watergate story."

Mr. St. Clair commented in like manner that "the President feels he has given them everything that he thinks they need." When asked repeatedly why the President should be able to determine what is and what is not relevant, though no direct answer was forthcoming, Mr. St. Clair indicated that the relevancy question was answered by the transcripts of the tapes which have been made public.

Thus it is clear that the White House has determined that it will decide what is needed by the Special Prosecutor and the House Judiciary Committee. This is a most unfortunate and counter-productive tactical decision.

Key to completing the Watergate investigation and getting Watergate behind us is the question of who has the authority to determine the scope of the inquiries now being conducted by the Special Prosecutor and the House Judiciary Committee? Who has the authority to determine what is and what is not relevant to these investigations?

The policy of the White House to place itself in the position of judging what is relevant threatens to delay still further the time when Watergate will be behind us, and, in fact, raises the specter of more constitutional confrontations and more trauma.

I urge the White House to alter its strategy in a fundamental way. It should acknowledge the authority of the House Judiciary Committee and the Special Prosecutor to determine relevancy. Only in this way will we end the anguish and resolve the questions of guilt and innocence as swiftly as possible.

Because, over the past year, I have been firm in my belief on the necessity of a special prosecutor able to investigate and prosecute matters relating to Watergate fully and expeditiously, I forwarded to Special Prosecutor Jaworski correspondence between General Haig and myself which discussed the question of who determines relevancy. In his reply to me, the Special Prosecutor states that:

The Special Prosecutor should determine what documents and recordings are important for matters within his jurisdiction. The White House is not privy to the scope or results of our investigations and, therefore, is in no position to judge what material is required for the pursuit of those investigations and the prosecution of any trials.

Referring to the refusal of the President to yield the evidence which the Special Prosecutor has requested, Mr. Jaworski concludes:

The failure to produce this requested evidence is now impeding these grand jury investigations.

Mr. President, I ask unanimous consent that the full text of Mr. Jaworski's April 12 letter to me be printed in the RECORD at the conclusion of my remarks.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PERCY. Mr. President, I do not prejudice the matters now under investigation. I recognize that, along with my colleagues in the Senate, I may be called upon to sit as a juror in judgment of these critical matters. However, it is not improper, and indeed I believe it is essential, to put out my deep concern about the manner in which the White House is responding to the Special Prosecutor and to the House Judiciary Committee.

I urge the White House to reverse its present position and spare us unnecessary and risky confrontations. We should allow those who are duly constituted and vested with the authority to decide what is relevant and necessary.

EXHIBIT 1

WATERGATE SPECIAL PROSECUTOR FORCE,

Washington, D.C., April 12, 1974.

HON. CHARLES H. PERCY,
U.S. SENATE,
Washington, D.C.

DEAR SENATOR PERCY: Thank you for your letter of April 2, 1974, enclosing a copy of General Haig's letter to you. Although I dislike to take issue with such a statement, I believe two matters warrant clarification.

General Haig indicates that I have stated publicly that the Watergate Grand Jury knew all that it had to know. It is true that I have indicated that the Grand Jury investigation was sufficiently complete to allow the Grand Jury to return its indictment. I never have stated that the Government, represented in this matter by the Special Prosecutor, knows all the facts relating to the events charged in the indictment. Clearly, burdens of proof differ in presentations to the grand jury and at a trial on an indictment. The prosecution, I believe, is obligated to bring before the trial jury all facts relevant and material to the determination of guilt or innocence. Moreover, it is possible that certain materials now in the President's possession will have to be made available to the defense under the doctrine of *Brady v. Maryland* or the provisions of the Jencks Act, 18 U.S.C. § 3500.

On March 12, 1974, I addressed a letter to Mr. St. Clair requesting access to those taped conversations and related materials we deemed necessary for trial preparation. Many of these recordings had been requested for the Grand Jury as early as January 9, 1974, and subsequently refused. As of now, there has been no definitive response to our request, and we have not been afforded a satisfactory explanation for the delay.

General Haig also states that the White House has provided voluntarily 19 recordings of Presidential conversations and that the return of the Watergate indictment reveals that the Grand Jury did not need the other requested material. General Haig, however, overlooks our responsibility for other areas of investigation under the mandate establishing the office of the Special Prosecutor. Indeed, some of the 19 recordings had no relationship to the investigation of the alleged Watergate cover-up—yet are vitally essential to other investigations for which this office has requested documents and grand jury subpoenas have been emanated. The failure to produce this requested evidence is now impeding these grand jury investigations.

I would further observe that White House cooperation cannot be measured by the volume of materials produced. One must look at each request on its merits. In this regard, as your letter to General Haig states, the Special Prosecutor should determine what documents and recordings are important for matters within his jurisdiction. The White House is not privy to the scope or results of our investigations and, therefore, is in no position to judge what material is required

for the pursuit of those investigations and the prosecution of any trials.

If I can provide you with any more information concerning this matter, or if you have any questions, please do not hesitate to call on me.

Sincerely,

LEON JAWORSKI,
Special Prosecutor.

REPORT ON WIRETAPPING AND ELECTRONIC SURVEILLANCE

Mr. MCCLELLAN, Mr. President, under the provisions of title III of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 213), the Director of the Administrative Office of the U.S. Courts is required to transmit to the Congress in April of each year a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications.

The Congress has just received the sixth report under the wiretapping and electronic surveillance provisions of title III. The report summarizes the period from January 1, 1973, to December 31, 1973, and again demonstrates the key role court-ordered wiretapping and electronic surveillance is playing in the fight against crime.

As observed by Mr. Henry E. Peterson, Assistant Attorney General in the Criminal Division, Department of Justice, during hearings before a House subcommittee on April 26, 1974:

We maintain that electronic surveillance techniques are, to date, the most effective method to bring criminal sanctions against organized criminals, and are indispensable in developing witnesses with corroborating testimony, and generally in providing a useful tool in the evidence-gathering process. The Department's most notable success with the use of electronic surveillance has been against organized crime controlled gambling enterprises. However, surveillances have also proved extremely useful in detecting and arresting violators of the other crimes listed in Section 2516 of Title 18.

Mr. President, the report shows that during the calendar year 1973 there were

864 applications for orders to intercept wire or oral communications granted by State and Federal judges. Only two applications for orders were denied during this period, which indicates that thorough, studied consideration is given before an application for an order is made.

Nineteen of the 34 States which had laws authorizing courts to issue wiretap orders used such statutes in 1973. See exhibit No. 11. Wiretap authorizations were reported from 93 State jurisdictions and the Department of Justice. The States issued by far the majority of intercept orders—734 out of 864. Seventy-five percent of the State authorizations were issued in the two-State area of New York and New Jersey. Out of the 864 total applications approved, only 130 were authorized by Federal judges. This figure represents a 37-percent decline in Federal orders over 1972.

The length of time authorized for the 864 orders varied from 1 day to 240 days. The average length of time for an original authorization was 24 days. See exhibit No. 2.

The highest reported cost for a single authorized intercept was \$153,488 for a Federal wiretap. The average cost for the total intercept orders was \$5,632. See exhibit No. 2.

The offenses specified in the applications for court orders covered a wide range from arson to usury. In 446, or 52 percent of the total authorizations, gambling was the most serious offense, and in 229 authorizations, drug offenses were under investigation. See exhibit No. 2.

As a result of intercepts installed during calendar year 1973, a total of 2,306 arrests had been made as of December 31, 1973. There were 409 convictions in 1973, compared to 402 in 1972. Many of the criminal cases for which orders were authorized in 1973 are still under active investigation.

Mr. President, I feel that the procedures requiring public reporting of statis-

tics on electronic surveillance are very beneficial, not only to provide us with the actual numbers of cases involved, but also to keep the citizens of this country advised of the true scope and operation of this important tool of law enforcement.

Mr. President, I ask unanimous consent that the following exhibits summarizing the availability and use of intercept procedures appear in the Record at the conclusion of my remarks:

No. 1—Jurisdiction with statutes authorizing the interception of wire or oral communications effective during the period January 1, 1973, to December 31, 1973.

No. 2—Summary report on authorized intercepts granted pursuant to title 18, U.S.C. 2518.

No. 3—Arrests and convictions as a result of intercept orders installed, calendar years 1969-1973.

EXHIBIT NO. 1

JURISDICTIONS WITH STATUTES AUTHORIZING THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS, EFFECTIVE DURING THE PERIOD JAN. 1 TO DEC. 31, 1973

State	Statutory citation ¹	Reported use of wiretap in 1973
Federal	18, 2516 to 2520	Yes.
Alabama	13, 1051 to 13, 1059	Yes.
Arizona	40-4-26 to 40-4-33	Yes.
California	Public Act No. 688	Yes.
Connecticut	11, 211-757	Yes.
Delaware	23, 541 to 556	Yes.
District of Columbia	9-2-01 to 9-2-04	Yes.
Florida	26-7001 to 26-3010	Yes.
Georgia	27-2513	Yes.
Kansas	35-42 to 35-59	Yes.
Massachusetts	272-98	Yes.
Minnesota	62A.01 to 62A.23	Yes.
Mississippi	26-701 to 26-707	Yes.
Nevada	200-510 to 200-520	Yes.
New Hampshire	5:9-4, 1 to 5:9-4, 11	Yes.
New Jersey	24, 158A-1 to 24, 158A-10	Yes.
New Mexico	40-12-1, 1	Yes.
New York	813-1 to 813-14, 814 to 825	Yes.
Ohio	141-720 to 141-900	No.
Rhode Island	12, 8-1, 1 to 12-5-1, 16	Yes.
South Dakota	22-13-1 to 22-13-11	No.
Virginia	17-1, 89-1	No.
Washington	9-73, 830 to 9-73, 880	No.
Wisconsin	968.27 to 968.33	Yes.

¹ Excludes jurisdictions which enacted legislation in 1974.

EXHIBIT NO. 2—SUMMARY REPORT ON AUTHORIZED INTERCEPTS GRANTED PURSUANT TO TITLE 18, U.S.C. SEC. 2518, JUNE 20 TO DEC. 31, 1968, JAN. 1 TO DEC. 31, 1969 THROUGH 1973

Summary item ¹	Reporting period						Summary item ¹	Reporting period					
	1968	1969	1970	1971	1972	1973		1968	1969	1970	1971	1972	1973
Intercept applications authorized	174	301	586	816	855	864	Robbery	8	24	13	17	9	5
Federal	33	182	285	205	130	130	Other	15	35	39	31	38	44
State	174	268	414	531	649	734	Intercept applications installed	147	270	582	792	841	812
Average length of original authorization (days)	70	23	22	22	22	24	State	30	179	201	231	205	130
Number of extensions	128	286	237	228	246	235	For authorizations installed:	147	240	403	511	636	682
Average length of extensions (days)	69	51	20	21	21	25	Actual number of days in use	NA	9,018.0	11,380.5	14,582.5	15,561	15,382
Location of authorized intercept:							Average number of persons involved	29	53	44	40	51	49
Residence	67	124	203	242	251	319	Average number of intercepted communications	454	544	656	643	600	610
Apartment	49	68	163	211	218	237	Average number of intercepted communications	98	265	296	299	303	304
Multiple dwelling	10	14	19	45	56	61	Number of authorizations where cost reported	120	262	569	776	805	798
Business and living quarters	45	71	121	134	120	136	Average cost where cost reported	\$1,358	\$2,634	\$5,354	\$4,199	\$5,435	\$5,632
Not indicated or other	3	9	40	44	62	37	\$1,000 to \$5,000	75	127	178	241	206	189
Major offense specified in application:							\$5,000 to \$10,000	21	45	88	165	130	167
Arson and explosives	1	1	13	2	2	1	\$10,000 to \$50,000	13	54	129	102	135	219
Robbery	5	11	16	11	9	7	\$50,000 and over	6	24	89	114	124	113
Drugs	71	99	172	126	130	229		12	76	96	134	113	113
Extortion (includes usury and blackmail)	13	10	17	5	13	21							
Gambling	20	132	325	579	497	434							
Homosexual and assault	22	19	21	18	15	47							
Larceny	19	10	21	31	22	30							

¹ See reverse side for minor revisions of previously published data.

² Installed intercepts includes only those intercepts where a report was received from a prosecuting attorney.

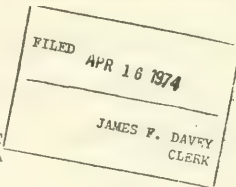
(NA), Not available.

91 On April 16, 1974 the Special Prosecutor, joined by defendants Colson and Mardian, moved that a trial subpoena be issued in United States v. Mitchell directing the President to produce tapes and documents relating to specified conversations between the President and the defendants and potential witnesses. On April 18, 1974 Judge Sirica granted the motion.

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Surica X

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



UNITED STATES OF AMERICA)

v.)

JOHN N. MITCHELL, et al.,)
Defendants.)

Criminal No. 74-110

MOTION

The United States of America hereby moves the Court for an order, pursuant to Rule 17(c), Federal Rules of Criminal Procedure, directing the issuance of a subpoena for the production of certain materials before the Court prior to the trial of the above-captioned action and permitting inspection of such materials by attorneys for the Government for the reasons stated in the Affidavit and Memorandum filed in support of this motion. The United States of America respectfully requests the Court to make the subpoena returnable before the Court at ten A.M. on April 23, 1974, or at such other time as the Court deems appropriate.

Dated:
April 16, 1974

Leon Jaworski

LEON JAWORSKI
Special Prosecutor

Watergate Special Prosecution
Force
1425 K Street, N. W.
Washington, D. C. 20005

Attorney for the
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, et al.

Crim. Case No. 74-110

O R D E R

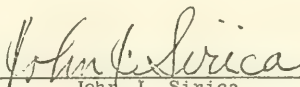
Upon consideration of the Motion of the United States for an order, pursuant to Rule 17(c), Federal Rules of Criminal Procedure, permitting the issuance of a subpoena for the production of certain materials before the Court prior to the trial of the above-captioned action, and defendants Charles W. Colson and Robert C. Mardian having joined in said Motion, and the Court having considered the Affidavit and Memorandum submitted in support of said Motion, and the Court having determined that the Motion should be granted, it is hereby this 18th day of April, 1974,

ORDERED that the attached subpoena be issued and made returnable before the Court at 10:00 a.m. on the 2nd day of May, 1974; and it is

FURTHER ORDERED that the United States Marshal for the District of Columbia is directed to serve forthwith a certified copy of this Order and the attached subpoena on Richard M. Nixon, The White House, Washington, D.C.; and it is

FURTHER ORDERED that delivery to James D. St. Clair,

Special Counsel to the President, or any other person of suitable age and discretion at the White House or the Old Executive Office Building, Washington, D.C. on or before the 22nd day of April, 1974, shall be deemed good and sufficient service.



John J. Sirica
United States District Judge

92. On April 29, 1974 the President addressed the Nation to announce his answer to the House Judiciary Committee subpoena of April 11 for additional Watergate tapes. The President stated that the next day he would furnish to the Committee transcripts prepared by the White House of relevant portions of all the subpoenaed conversations. The President said that he had personally decided questions of relevancy. With regard to four subpoenaed conversations that occurred prior to March 21, 1973 the President informed the Committee that a search of the tapes had failed to disclose two of these conversations, furnished a transcript of a portion of the March 17 conversation between the President and Dean that related to the Fielding break-in, and furnished a transcript of a telephone conversation between the President and Dean on March 20, 1973.

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92.1 President Nixon Address to the Nation, April 29, 1974, 10 Presidential Documents 450-57.....	992
92.2 Appendix, Submission of Recorded Presidential Conversations to the Committee on the Judiciary by President Richard Nixon, April 30, 1974.....	1000

For the term expiring March 26, 1980:

DURWARD BELMONT VARNER, of Lincoln, Nebr., president, University of Nebraska. Mr. Varner will succeed Jack J. Valenti, whose term has expired.

For the remainder of the term expiring March 26, 1976:

VIRGINIA DUNCAN, of Sausalito, Calif., producer-director, KQED television, San Francisco, Calif. Mrs. Duncan will succeed Thomas B. Curtis, who has resigned.

The Corporation for Public Broadcasting was established by Public Law 90-129 of November 7, 1967, to facilitate the development of noncommercial educational radio and television broadcasting. The Board of Directors consists of 15 members appointed by the President with the advice and consent of the Senate.

SUBPOENA OF PRESIDENTIAL TAPES AND MATERIALS

The President's Address to the Nation Announcing His Answer to the Subpoena From the House Judiciary Committee. April 29, 1974

Good evening:

I have asked for this time tonight in order to announce my answer to the House Judiciary Committee's subpoena for additional Watergate tapes, and to tell you something about the actions I shall be taking tomorrow—about what I hope they will mean to you and about the very difficult choices that were presented to me.

These actions will at last, once and for all, show that what I knew and what I did with regard to the Watergate break-in and coverup were just as I have described them to you from the very beginning.

I have spent many hours during the past few weeks thinking about what I would say to the American people if I were to reach the decision I shall announce tonight. And so, my words have not been lightly chosen; I can assure you they are deeply felt.

It was almost 2 years ago, in June 1972, that five men broke into the Democratic National Committee headquarters in Washington. It turned out that they were connected with my reelection committee, and the Watergate break-in became a major issue in the campaign.

The full resources of the FBI and the Justice Department were used to investigate the incident thoroughly. I instructed my staff and campaign aides to cooperate fully with the investigation. The FBI conducted nearly 1,500 interviews. For 9 months—until March 1973—I was assured by those charged with conducting and monitoring the investigations that no one in the White House was involved.

Nevertheless, for more than a year, there have been allegations and insinuations that I knew about the planning of the Watergate break-in and that I was involved in an extensive plot to cover it up. The House Judiciary Committee is now investigating these charges.

On March 6, I ordered all materials that I had previously furnished to the Special Prosecutor turned over to the committee. These included tape recordings of 19 Presidential conversations and more than 700 documents from private White House files.

On April 11, the Judiciary Committee issued a subpoena for 42 additional tapes of conversations which it contended were necessary for its investigation. I agreed to respond to that subpoena by tomorrow.

In these folders that you see over here on my left are more than 1,200 pages of transcripts of private conversations I participated in be-

tween September 15, 1972, and April 27 of 1973, with my principal aides and associates with regard to Watergate. They include all the relevant portions of all of the subpoenaed conversations that were recorded, that is, all portions that relate to the question of what I knew about Watergate or the coverup and what I did about it.

They also include transcripts of other conversations which were not subpoenaed, but which have a significant bearing on the question of Presidential actions with regard to Watergate. These will be delivered to the committee tomorrow.

In these transcripts, portions not relevant to my knowledge or actions with regard to Watergate are not included, but everything that is relevant is included—the rough as well as the smooth, the strategy sessions, the exploration of alternatives, the weighing of human and political costs.

As far as what the President personally knew and did with regard to Watergate and the coverup is concerned, these materials—together with those already made available—will tell it all.

I shall invite Chairman Rodino and the committee's ranking minority member, Congressman Hutchinson of Michigan, to come to the White House and listen to the actual, full tapes of these conversations, so that they can determine for themselves beyond question that the transcripts are accurate and that everything on the tapes relevant to my knowledge and my actions on Watergate is included. If there should be any disagreement over whether omitted material is relevant, I shall meet with them personally in an effort to settle the matter. I believe this arrangement is fair, and I think it is appropriate.

For many days now, I have spent many hours of my own time personally reviewing these materials, and personally deciding questions of relevancy. I believe it is appropriate that the committee's review should also be made by its own senior elected officials, and not by staff employees.

The task of Chairman Rodino and Congressman Hutchinson will be made simpler than was mine by the fact that the work of preparing the transcripts has been completed. All they will need to do is to satisfy themselves of their authenticity and their completeness.

Ever since the existence of the White House taping system was first made known last summer, I have tried vigorously to guard the privacy of the tapes. I have been well aware that my effort to protect the confidentiality of Presidential conversations has heightened the sense of mystery about Watergate and, in fact, has caused increased suspicions of the President. Many people assume that the tapes must incriminate the President, or that otherwise, he would not insist on their privacy.

But the problem I confronted was this: Unless a President can protect the privacy of the advice he gets, he cannot get the advice he needs.

This principle is recognized in the constitutional doctrine of executive privilege, which has been defended and maintained by every President since Washington and which has been recognized by the courts whenever tested as inherent in the Presidency. I consider it to be my constitutional responsibility to defend this principle.

Three factors have now combined to persuade me that a major unprecedented exception to that principle is now necessary.

First, in the present circumstances, the House of Representatives must be able to reach an informed judgment about the President's role in Watergate.

Second, I am making a major exception to the principle of confidentiality because I believe such action is now necessary in order to restore the principle itself, by clearing the air of the central question that has brought such pressures upon it—and also to provide the evidence which will allow this matter to be brought to a prompt conclusion.

Third, in the context of the current impeachment climate, I believe all the American people, as well as their Representatives in Congress, are entitled to have not only the facts but also the evidence that demonstrates those facts.

I want there to be no question remaining about the fact that the President has nothing to hide in this matter.

The impeachment of a President is a remedy of last resort; it is the most solemn act of our entire constitutional process. Now, regardless of whether or not it succeeded, the action of the House in voting a formal accusation requiring trial by the Senate would put the Nation through a wrenching ordeal it has endured only once in its lifetime, a century ago, and never since America has become a world power with global responsibilities.

The impact of such an ordeal would be felt throughout the world, and it would have its effect on the lives of all Americans for many years to come.

Because this is an issue that profoundly affects all the American people, in addition to turning over these transcripts to the House Judiciary Committee, I have directed that they should all be made public—all of these that you see here.

To complete the record, I shall also release to the public transcripts of all those portions of the tapes already turned over to the Special Prosecutor and to the committee that relate to Presidential actions or knowledge of the Watergate affair.

During the past year, the wildest accusations have been given banner headlines and ready credence, as well. Rumor, gossip, innuendo, accounts from unnamed sources of what a prospective witness might testify to have filled the morning newspapers and then are repeated on the evening newscasts day after day.

Time and again, a familiar pattern repeated itself. A charge would be reported the first day as what it was—just an allegation. But it would then be referred back to the next day and thereafter as if it were true.

The distinction between fact and speculation grew blurred. Eventually, all seeped into the public consciousness as a vague general impression of massive wrongdoing, implicating everybody, gaining credibility by its endless repetition.

The basic question at issue today is whether the President personally acted improperly in the Watergate matter. Month after month of rumor, insinuation, and charges by just one Watergate witness—John Dean—suggested that the President did act improperly.

This sparked the demands for an impeachment inquiry. This is the question that must be answered. And this is the question that will be answered by these transcripts that I have ordered published tomorrow.

These transcripts cover hour upon hour of discussions that I held with Mr. Haldeman, John Ehrlichman, John Dean, John Mitchell, former Attorney General Kleindienst, Assistant Attorney General Petersen, and others with regard to Watergate.

They were discussions in which I was probing to find out what had happened, who was responsible, what were the various degrees of responsibilities, what were the legal culpabilities, what were the political ramifications, and what actions were necessary and appropriate on the part of the President.

I realize that these transcripts will provide grist for many sensational stories in the press. Parts will seem to be contradictory with one another, and parts will be in conflict with some of the testimony given in the Senate Watergate committee hearings.

I have been reluctant to release these tapes not just because they will embarrass me and those with whom I have talked—which they will—and not just because they will become the subject of speculation and even ridicule—which they will—and not just because certain parts of them will be seized upon by political and journalistic opponents—which they will.

I have been reluctant because in these and in all the other conversations in this office, people have spoken their minds freely, never dreaming that specific sentences or even parts of sentences would be picked out as the subjects of national attention and controversy.

I have been reluctant because the principle of confidentiality is absolutely essential to the conduct of the Presidency. In reading the raw transcripts of these conversations, I believe it will be more readily apparent why that principle is essential and must be maintained in the future. These conversations are unusual in their subject matter, but the same kind of uninhibited discussion—and it is that—the same brutal candor, is necessary in discussing how to bring warring factions to the peace table or how to move necessary legislation through the Congress.

Names are named in these transcripts. Therefore, it is important to remember that much that appears in them is no more than hearsay or speculation, exchanged as I was trying to find out what really had happened, while my principal aides were reporting to me on rumors and reports that they had heard, while we discussed the various, often conflicting stories that different persons were telling.

As the transcripts will demonstrate, my concerns during this period covered a wide range. The first and obvious one was to find out just exactly what had happened and who was involved.

A second concern was for the people who had been, or might become, involved in Watergate. Some were close advisers, valued friends, others whom I had trusted. And I was also concerned about the human impact on others, especially some of the young people and their families who had come to Washington to work in my Administration, whose lives might be suddenly ruined by something they had done in an excess of loyalty or in the mistaken belief that it would serve the interests of the President.

And then I was quite frankly concerned about the political implications. This represented potentially a devastating blow to the Administration and to its programs, one which I knew would be exploited for all it

was worth by hostile elements in the Congress as well as in the media. I wanted to do what was right, but I wanted to do it in a way that would cause the least unnecessary damage in a highly charged political atmosphere to the Administration.

And fourth, as a lawyer, I felt very strongly that I had to conduct myself in a way that would not prejudice the rights of potential defendants.

And fifth, I was striving to sort out a complex tangle, not only of facts but also questions of legal and moral responsibility. I wanted, above all, to be fair. I wanted to draw distinctions, where those were appropriate, between persons who were active and willing participants on the one hand, and on the other, those who might have gotten inadvertently caught up in the web and be technically indictable but morally innocent.

Despite the confusions and contradictions, what does come through clearly is this:

John Dean charged in sworn Senate testimony that I was "fully aware of the coverup" at the time of our first meeting on September 15, 1972. These transcripts show clearly that I first learned of it when Mr. Dean himself told me about it in this office on March 21—some 6 months later.

Incidentally, these transcripts—covering hours upon hours of conversations—should place in somewhat better perspective the controversy over the 18½ minute gap in the tape of a conversation I had with Mr. Haldeman back in June of 1972.

Now, how it was caused is still a mystery to me and I think to many of the experts, as well. But I am absolutely certain, however, of one thing: that it was not caused intentionally by my secretary, Rose Mary Woods, or any of my White House assistants. And certainly if the theory were true that during those 18½ minutes Mr. Haldeman and I cooked up some sort of a Watergate coverup scheme, as so many have been quick to surmise, it hardly seems likely that in all of our subsequent conversations—many of them are here—which neither of us ever expected would see the light of day, there is nothing remotely indicating such a scheme; indeed, quite the contrary.

From the beginning, I have said that in many places on the tapes there were ambiguities—statements and comments that different people with different perspectives might interpret in drastically different ways—but although the words may be ambiguous, though the discussions may have explored many alternatives, the record of my actions is totally clear now, and I still believe it was totally correct then.

A prime example is one of the most controversial discussions, that with Mr. Dean on March 21—the one in which he first told me of the coverup, with Mr. Haldeman joining us midway through the conversation.

His revelations to me on March 21 were a sharp surprise, even though the report he gave to me was far from complete, especially since he did not reveal at that time the extent of his own criminal involvement.

I was particularly concerned by his report that one of the Watergate defendants, Howard Hunt, was threatening blackmail unless he and his lawyer were immediately given \$120,000 for legal fees and family support, and that he was attempting to blackmail the White House, not by threatening exposure on the Watergate matter, but by threatening to

reveal activities that would expose extremely sensitive, highly secret national security matters that he had worked on before Watergate.

I probed, questioned, tried to learn all Mr. Dean knew about who was involved, what was involved. I asked more than 150 questions of Mr. Dean in the course of that conversation.

He said to me, and I quote from the transcripts directly: "I can just tell from our conversation that these are things that you have no knowledge of."

It was only considerably later that I learned how much there was that he did not tell me then—for example, that he himself had authorized promises of clemency, that he had personally handled money for the Watergate defendants, and that he had suborned perjury of a witness.

I knew that I needed more facts. I knew that I needed the judgments of more people. I knew the facts about the Watergate coverup would have to be made public, but I had to find out more about what they were before I could decide how they could best be made public.

I returned several times to the immediate problem posed by Mr. Hunt's blackmail threat, which to me was not a Watergate problem, but one which I regarded, rightly or wrongly, as a potential national security problem of very serious proportions. I considered long and hard whether it might in fact be better to let the payment go forward, at least temporarily, in the hope that this national security matter would not be exposed in the course of uncovering the Watergate coverup.

I believed then, and I believe today, that I had a responsibility as President to consider every option, including this one, where production of sensitive national security matters was at issue—protection of such matters. In the course of considering it and of "just thinking out loud," as I put it at one point, I several times suggested that meeting Hunt's demands might be necessary.

But then I also traced through where that would lead. The money could be raised. But money demands would lead inescapably to clemency demands, and clemency could not be granted. I said, and I quote directly from the tape: "It is wrong, that's for sure." I pointed out, and I quote again from the tape: "But in the end we are going to be bled to death. And in the end it is all going to come out anyway. Then you get the worst of both worlds. We are going to lose, and people are going to—"

And Mr. Haldeman interrupts me and says: "And look like dopes!"

And I responded, "And in effect look like a coverup. So that we cannot do."

Now I recognize that this tape of March 21 is one which different meanings could be read in by different people. But by the end of the meeting, as the tape shows, my decision was to convene a new grand jury and to send everyone before the grand jury with instructions to testify.

Whatever the potential for misinterpretation there may be as a result of the different options that were discussed at different times during the meeting, my conclusion at the end of the meeting was clear. And my actions and reactions as demonstrated on the tapes that follow that date show clearly that I did not intend the further payment to Hunt or anyone else be made. These are some of the actions that I took in the weeks that followed in my effort to find the truth, to carry out my responsibilities to enforce the law.

As a tape of our meeting on March 22, the next day, indicates, I directed Mr. Dean to go to Camp David with instructions to put together a written report. I learned 5 days later, on March 26, that he was unable to complete it. And so on March 27 I assigned John Ehrlichman to try to find out what had happened, who was at fault, and in what ways and to what degree.

One of the transcripts I am making public is a call that Mr. Ehrlichman made to the Attorney General on March 28, in which he asked the Attorney General to report to me, the President, directly, any information he might find indicating possible involvement of John Mitchell or by anyone in the White House. I had Mr. Haldeman separately pursue other, independent lines of inquiry.

Throughout, I was trying to reach determinations on matters of both substance and procedure on what the facts were and what was the best way to move the case forward. I concluded that I wanted everyone to go before the grand jury and testify freely and fully. This decision, as you will recall, was publicly announced on March 30, 1973. I waived executive privilege in order to permit everybody to testify. I specifically waived executive privilege with regard to conversations with the President, and I waived the attorney-client privilege with John Dean in order to permit him to testify fully and, I hope, truthfully.

Finally, on April 14—3 weeks after I learned of the coverup from Mr. Dean—Mr. Ehrlichman reported to me on the results of his investigation. As he acknowledged, much of what he had gathered was hearsay, but he had gathered enough to make it clear that the next step was to make his findings completely available to the Attorney General, which I instructed him to do.

And the next day, Sunday, April 15, Attorney General Kleindienst asked to see me, and he reported new information which had come to his attention on this matter. And although he was in no way whatever involved in Watergate, because of his close personal ties, not only to John Mitchell but to other potential people who might be involved, he quite properly removed himself from the case.

We agreed that Assistant Attorney General Henry Petersen, the head of the Criminal Division, a Democrat and career prosecutor, should be placed in complete charge of the investigation.

Later that day I met with Mr. Petersen. I continued to meet with him, to talk with him, to consult with him, to offer him the full cooperation of the White House, as you will see from these transcripts, even to the point of retaining John Dean on the White House Staff for an extra 2 weeks after he admitted his criminal involvement because Mr. Petersen thought that would make it easier for the prosecutor to get his cooperation in breaking the case if it should become necessary to grant Mr. Dean's demand for immunity.

On April 15, when I heard that one of the obstacles to breaking the case was Gordon Liddy's refusal to talk, I telephoned Mr. Petersen and directed that he should make clear not only to Mr. Liddy but to everyone that—and now I quote directly from the tape of that telephone call—“As far as the President is concerned, everybody in this case is to talk and to tell the truth.” I told him if necessary I would personally meet with

Mr. Liddy's lawyer to assure him that I wanted Liddy to talk and to tell the truth.

From the time Mr. Petersen took charge, the case was solidly within the criminal justice system, pursued personally by the Nation's top professional prosecutor with the active, personal assistance of the President of the United States.

I made clear there was to be no coverup.

Let me quote just a few lines from the transcripts—you can read them to verify them—so that you can hear for yourself the orders I was giving in this period.

Speaking to Haldeman and Ehrlichman, I said: “. . . It is ridiculous to talk about clemency. They all knew that.”

Speaking to Ehrlichman, I said: “We all have to do the right thing . . . We just cannot have this kind of a business . . .”

Speaking to Haldeman and Ehrlichman, I said: “The boil had to be pricked . . . We have to prick the boil and take the heat. Now that's what we are doing here.”

Speaking to Henry Petersen, I said: “I want you to be sure to understand that you know we are going to get to the bottom of this thing.”

Speaking to John Dean, I said: “Tell the truth. That is the thing I have told everybody around here.”

And then speaking to Haldeman: “And you tell Magruder, now Jeb, this evidence is coming in, you ought to go to the grand jury. Purge yourself if you're perjured and tell this whole story.”

I am confident that the American people will see these transcripts for what they are, fragmentary records from a time more than a year ago that now seems very distant, the records of a President and of a man suddenly being confronted and having to cope with information which, if true, would have the most far-reaching consequences not only for his personal reputation but, more important, for his hopes, his plans, his goals for the people who had elected him as their leader.

If read with an open and a fair mind and read together with the record of the actions I took, these transcripts will show that what I have stated from the beginning to be the truth has been the truth: that I personally had no knowledge of the break-in before it occurred, that I had no knowledge of the coverup until I was informed of it by John Dean on March 21, that I never offered clemency for the defendants, and that after March 21 my actions were directed toward finding the facts and seeing that justice was done, fairly and according to the law.

The facts are there. The conversations are there. The record of actions is there.

To anyone who reads his way through this mass of materials I have provided, it will be totally abundantly clear that as far as the President's role with regard to Watergate is concerned, the entire story is there.

As you will see, now that you also will have this mass of evidence I have provided, I have tried to cooperate with the House Judiciary Committee. And I repeat tonight the offer that I have made previously: to answer written interrogatories under oath and if there are then issues still unresolved to meet personally with the Chairman of the committee and with Congressman Hutchinson to answer their questions under oath.

APPENDIX TO SUBMISSION

- | | |
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| 1. <u>Item 1(a)</u> - On or about February 20, 1973 -
Conversation between The President and
Haldeman about Magruder. | Search of tapes
failed to disclose
such a conversation. |
| 2. <u>Item 1(b)</u> - On or about February 27, 1973 -
Conversation between The President and
Ehrlichman assigning Dean to work with
The President on Watergate. | Search of tapes
failed to disclose
such a conversation. |
| 3. <u>Item 1(c)</u> - March 17, 1973 - Conversation
between The President and Dean, Oval
Office, 1:25 - 2:10 pm. | Supplied. |
| 4. - March 20, 1973 - Telephone con-
versation between The President and Dean,
7:29 - 7:43 pm. | Supplied. |
| 5. <u>Item 1(d)</u> - March 27, 1973 - Conversation
between The President and Ehrlichman,
EOB Office, 11:10 am - 1:30 pm. | Supplied. |
| 6. - March 30, 1973 - Conversation
between The President and Ehrlichman,
Oval Office, 12:02 - 12:18 pm. | Supplied. |
| 7. <u>Item 1(e)</u> - April 14, 1973 - Meeting: The
President, Ehrlichman and Haldeman, EOB
Office, 8:55 - 11:31 am. | Supplied. |
| 8. - April 14, 1973 - Meeting: The
President and Haldeman, Oval Office, 1:55 -
2:13 pm. | Supplied. |
| 9. - April 14, 1973 - Meeting: The
President, Ehrlichman and Haldeman, Oval
Office, 2:24 - 3:55 pm. | Supplied. |
| 10. - April 14, 1973 - Meeting: The
President, Ehrlichman and Haldeman, EOB
Office, 5:15 - 6:45 pm. | Supplied. |
| 11. - April 14, 1973 - Telephone conver-
sation between The President and Haldeman,
11:02 - 11:16 pm. | Supplied. |

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| 12. | - April 14, 1973 - Telephone conversation between The President and Ehrlichman, 11:22 - 11:53 pm. | Supplied. |
| 13. | - April 15, 1973 - Meeting: The President and Ehrlichman, Oval Office, 10:35 - 11:15 am. | Supplied. |
| 14. | - April 15, 1973 - Meeting: The President and Ehrlichman, EOB Office, 2:30 - 3:34 pm. | See # 31. |
| 15. | - April 15, 1973 - Telephone conversation between The President and Haldeman, 3:27 - 3:44 pm. | Supplied. |
| 16. | - April 15, 1973 - Meeting: The President, Haldeman and Ehrlichman, EOB Office, 7:50 - 9:15 pm. | See # 31. |
| 17. | - April 15, 1973 - Meeting: The President, Ehrlichman and Haldeman, EOB Office, 10:16 - 11:15 pm. | See # 31. |
| 18. | - April 16, 1973 - Telephone conversation between The President and Haldeman, 12:08 - 12:23 am. | Call made from residence telephone. Conversation not recorded. |
| 19. | - April 16, 1973 - Telephone conversation between The President and Ehrlichman, 8:18 - 8:22 am. | Call made from residence telephone. Conversation not recorded. |
| 20. | - April 16, 1973 - Meeting: The President, Haldeman and Ehrlichman, Oval Office, 9:50 - 9:59 am. | Supplied. |
| 21. | - April 16, 1973 - Meeting: The President, Haldeman and Ehrlichman, Oval Office, 10:50 - 11:04 am. | Supplied. |

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| 22. | - April 16, 1973 - Meeting: The President, Haldeman and Ehrlichman, Oval Office, 12:00 - 12:31 pm. | Supplied. |
| 23. | - April 16, 1973 - Meeting: The President, Ehrlichman and Ziegler, EOB Office, 3:27 - 4:04 pm. | Supplied. |
| 24. | - April 16, 1973 - Telephone conversation between The President and Ehrlichman, 9:27 - 9:49 pm. | Call made from residence telephone. Conversation not recorded. |
| 25. | - April 17, 1973 - Meeting: The President and Haldeman, Oval Office, 9:47 - 9:59 am. | Supplied. |
| 26. | - April 17, 1973 - Meeting: The President, Haldeman, Ehrlichman, Ziegler, Oval Office, 12:35 - 2:20 pm. | Supplied. |
| 27. | - April 17, 1973 - Telephone conversation between The President and Ehrlichman, 2:39 - 2:40 pm. | Supplied. |
| 28. | - April 17, 1973 - Meeting: The President, Haldeman and Ehrlichman, Oval Office, 3:50 - 4:35 pm. | Supplied. |
| 29. | - April 17, 1973 - Meeting: The President, Haldeman, Ehrlichman and Rogers, EOB Office, 5:20 - 7:14 pm. | Supplied. |
| 30. | <u>Item 2</u> - April 15, 1973 - Telephone conversation between The President and Kleindienst, 10:13 - 10:15 am. | Call made from residence telephone. Conversation not recorded. |
| 31. | - April 15, 1973 - Meeting: The President and Kleindienst, EOB Office, 1:12 - 2:22 pm. | Recorded portion of conversation supplied. Tape ran out during meeting with Kleindienst and nothing further was recorded in EOB Office on April 15, 1973. |

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| 32. | - April 15, 1973 - Telephone conversation between The President and Kleindienst, 3:48 - 3:49 pm. | Supplied. |
| 33. | - April 15, 1973 - Meeting: The President, Kleindienst and Petersen, EOB Office, 4:00 - 5:15 pm. | See # 31. |
| 34. | - April 15, 1973 - Telephone conversation between the President and Petersen, 8:14 - 8:18 pm. | Supplied. |
| 35. | - April 15, 1973 - Telephone conversation between The President and Petersen, 8:25 - 8:26 pm. | Supplied. |
| 36. | - April 15, 1973 - Telephone conversation between The President and Petersen, 9:39 - 9:41 pm. | Supplied. |
| 37. | - April 15, 1973 - Telephone conversation between The President and Petersen, 11:45 - 11:53 pm. | Supplied. |
| 38. | - April 16, 1973 - Meeting: The President and Petersen, EOB Office, 1:39 - 3:25 pm. | Supplied |
| 39. | - April 16, 1973 - Telephone conversation between The President and Petersen, 8:58 - 9:14 pm. | Supplied. |
| 40. | - April 17, 1973 - Meeting: The President and Petersen, Oval Office, 2:46 - 3:49 pm. | Supplied. |
| 41. | - April 18, 1973 - Telephone conversation between The President and Petersen, 2:50 - 2:56 pm. | Supplied. |

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| 42. | - April 18, 1973 - Telephone conversation between The President and Petersen, 6:28 - 6:37 pm. | Call made from Camp David. Conversation not recorded. |
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Non-Subpoenaed Material:

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| 43. | April 8, 1973 - Telephone conversation between The President and Ehrlichman, 7:33 - 7:37 am. | Supplied. |
| 44. | April 14, 1973 - Telephone conversation between Ehrlichman and Kleindienst at approximately 6:00 pm. | Supplied. |
| 45. | April 15, 1973 - Telephone conversation between Higby and Haldeman. | Supplied. |
| 46. | April 19, 1973 - Meeting: The President, Wilson and Strickler, EOB Office, 8:26 - 9:32 pm. | Supplied. |
| 47. | April 27, 1973 - Meeting: The President and Petersen, Oval Office, 5:37 - 5:43 pm. | Supplied. |
| 48. | April 27, 1973 - Meeting: The President, Petersen and Ziegler, Oval Office, 6:04 - 6:48 pm. | Supplied. |
| 49. | March 30, 1973 - Press Briefing by Ziegler. | Supplied. |
| 50. | April 17, 1973 - Statement by the President. | Supplied. |
| 51. | March 28, 1973 - Telephone conversation between Ehrlichman and Kleindienst. | Supplied. |
| 52. | April 30, 1973 - Statement by the President. | Supplied. |

93. On May 1, 1974 the President entered a special appearance before Judge Sirica and moved to quash the Special Prosecutor's subpoena issued April 18, 1974. The President invoked executive privilege with respect to all subpoenaed conversations except for the portions of twenty of the conversations he had made public on April 30 by way of edited transcripts.

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93.2 Formal Claim of Privilege, May 1, 1974, <u>United States</u> v. <u>Mitchell</u> , Crim. No. 74-110.....	1007

in car 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED [initials]

JAMES F. DAVEY
CLERK

UNITED STATES OF AMERICA)

v.)

JOHN N. MITCHELL, et. al.,)

Defendants.)

Criminal No. 74-110

Special Appearance and Motion to Quash

Pursuant to Rule 17(c), Federal Rules of Criminal Procedure, Richard M. Nixon, President of the United States, through his counsel, enters this special appearance for the limited purpose of moving this Court to quash the subpoena duces tecum issued by this Court's order dated April 18, 1974, permitting production and inspection of certain materials and made returnable before this Court on May 2, 1974. For the reasons set forth in the Memorandum filed in support of this Motion, we respectfully request that this Court enter an order quashing the subpoena in all respects.

Respectfully submitted,

James D. St. Clair

JAMES D. ST. CLAIR
MICHAEL A. STERLACCI
JOHN A. MC CAHILL
JEROME J. MURPHY
JEAN A. STAUDT
EUGENE R. SULLIVAN
JAMES J. TANSEY

Of Counsel

CHARLES ALAN WRIGHT
2500 Red River Street
Austin, Texas 78705

Attorneys for the President

The White House
Washington, D.C. 20500
Telephone Number: 456-1414

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)

v.)

JOHN N. MITCHELL, et al.,)

Defendants.)

Criminal no. 74-110

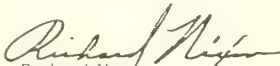
Formal Claim of Privilege

I, Richard Nixon, President of the United States, hereby represent to the Court that, except as noted hereafter, the materials covered by the subpoena issued April 18, 1974, to the extent that they exist, are within the constitutional privilege of the President to refuse to disclose confidential information when disclosure would be contrary to the public interest.

Portions of twenty of the conversations described in the subpoena have been made public and no claim of privilege is advanced with regard to those Watergate-related portions of those conversations. These are items 9, 11, 15, 16, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31 of the subpoena.

The other items sought are confidential conversations between a President and his close advisors that it would be inconsistent with the public interest to produce. Thus I must respectfully claim privilege with regard to them to the extent that they may have been recorded, or that there may be memoranda, papers, transcripts, or other writings relating to them.

Respectfully submitted,


Richard Nixon
President of the United States

May 1, 1974

94. On May 15, 1974 the House Judiciary Committee issued a subpoena to the President for the production of tape recordings and other evidence relating to specified conversations between the President and Haldeman, Colson and Mitchell on April 4, 1972 and on June 20 and 23, 1972. On the same day the Committee issued a subpoena to the President for the President's daily diaries for certain specified time periods in 1972 and 1973.

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94.2 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 15, 1974.....	1012

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon

Richard M. Nixon, President of the United States of America, or any
subordinate officer, official or employee with custody or control of
the things described in the attached schedule,

to be and appear before the Committee on the Judiciary

~~Committee~~ of the House of Representatives of the United States, of which the Hon.

Peter W. Rodino, Jr. is chairman, and to bring with
him the things specified in the schedule attached hereto and made a part
hereof,

in their chamber in the city of Washington, on or before

May 22, 1974, at the hour of 10:00 A.M.

produce and deliver said things to said Committee, or their
then and there to ~~testify touching matters of inquiry committed to said Committee and have~~
duly authorized representative, in connection with the Committee's investi-
~~gation authorized and directed by~~
~~gation authorized and directed by~~
H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

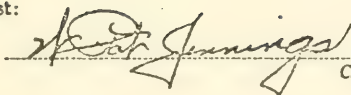
of the United States, at the city of Washington, this

15th day of May, 1974.

Peter W. Rodino, Jr.

Chairman.

Attest:



Clerk.

94.1 SCHEDULE OF THINGS REQUIRED TO BE PRODUCED PURSUANT TO SUBPOENA

SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA OF THE COMMITTEE ON THE JUDICIARY

All tapes, dictabelts, other electronic and mechanical recordings, and transcripts, memoranda, notes or other writings or things relating to the following conversations:

1. Meetings among the President, Mr. Haldeman and Mr. Mitchell on April 4, 1972 from 4:13 to 4:50 p.m. and between the President and Mr. Haldeman from 6:03 to 6:18 p.m.

2. Conversations on June 20, 1972 between the President and Mr. Haldeman, and the President and Mr. Colson, as follows:

2:20 - 3:30 p.m.	Meeting between the President and Mr. Colson
4:35 - 5:25 p.m.	Meeting between the President and Mr. Haldeman
7:52 - 7:59 p.m.	Telephone conversation between the President and Mr. Haldeman
8:04 - 8:21 p.m.	Telephone conversation between the President and Mr. Colson
8:42 - 8:50 p.m.	Telephone conversation between the President and Mr. Haldeman
11:33 p.m. 6/20 - 12:05 a.m. 6/21	Telephone conversation between the President and Mr. Colson

3. Conversations on June 23, 1972 between the President and Mr. Haldeman, as follows:

10:04 - 10:39 a.m.	Meeting between the President and Mr. Haldeman (Mr. Ziegler present from 10:33 - 10:39 a.m.)
1:04 - 1:13 p.m.	Meeting between the President and Mr. Haldeman
2:20 - 2:45 p.m.	Meeting between the President and Mr. Haldeman (Mr. Ziegler present from 2:40 - 2:43 p.m.)

COPY

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon

Richard M. Nixon, President of the United States of America, or any
subordinate officer, official or employee with custody or control of
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to be and appear before the Committee on the Judiciary

~~Congress~~ of the House of Representatives of the United States, of which the Hon.

Peter W. Rodino, Jr. is chairman, and to bring with
him the things specified in the schedule attached hereto and made a part
hereof,

in their chamber in the city of Washington, on or before

May 22, 1974, at the hour of 10:00 A.M.

produce and deliver said things to said Committee, or their
then and there to ~~produce and deliver said things to said Committee, or their~~
duly authorized representative, in connection with the Committee's investi-
~~gation into the activities of the President of the United States~~
gation authorized and directed by

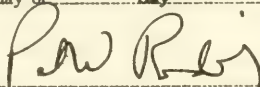
H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

of the United States, at the city of Washington, this

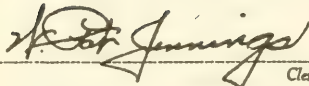
15th day of May, 1974.



Peter W. Rodino, Jr.

Chairman.

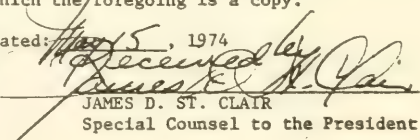
Attest:



Clerk.

On behalf of Richard M. Nixon, President
of the United States of America, I accept
service of the original subpoena, of
which the foregoing is a copy.

Dated: May 15, 1974



JAMES D. ST. CLAIR
Special Counsel to the President

SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA OF THE COMMITTEE ON THE JUDICIARY

The President's daily diaries (as reflected on U. S. Government Printing Office Form "1972 O-472-086" or any predecessor or successor forms) for the period April through July 1972, February through April 1973, July 12 through July 31, 1973 and October 1973.

95. On May 20, 1974 Judge Sirica denied the President's motion to quash the Special Prosecutor's subpoena for tape recordings and other documents in United States v. Mitchell and ordered the President to produce the objects and documents.

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95.1 Order and Opinion, May 20, 1974, <u>United States</u> v. <u>Mitchell</u> , Crim. No. 74-110, 1, 8.....	1016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA]
v.] Criminal No. 74-110
JOHN N. MITCHELL, et al.]

OPINION AND ORDER

This matter comes before the Court on motion of President Richard M. Nixon to quash a subpoena duces tecum issued to him by the Watergate Special Prosecutor with leave of this Court.

On April 16, 1974, Special Prosecutor Leon Jaworski moved the Court for an order, pursuant to Rule 17(c), ^{1/} Federal Rules of Criminal Procedure, directing the issuance of a subpoena for the production of specified materials prior to trial in the case of United States v. John N. Mitchell, et al., CR 74-110, DDC. ^{2/} The proposed subpoena, prepared by the Special Prosecutor and directed to the President "or any subordinate officer, official, or employee with custody or control of the documents or objects" described, listed in 46 paragraphs the specific meetings and

1/ Rule 17. Subpoena

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

2/ The motion asked that the subpoenaed materials be ordered produced before the Court with permission granted to Government attorneys to inspect them. Three of the seven defendants in United States v. Mitchell have filed motions joining in that of the Special Prosecutor with the stipulation that materials produced be made available to the defendants in full. A fourth defendant filed a response in support of the subpoena, but in opposition to the Special Prosecutor's motion insofar as it failed to assure defendants access to the materials upon production.

To protect the rights of individuals, various of the proceedings and papers concerning this subpoena have been sealed. Such matters will remain under seal, and all persons having knowledge of them will remain subject to restrictions of confidentiality imposed upon them pending further order of the Court. The foregoing, of course, does not affect the transmittal of such materials to appellate courts under seal as a necessary part of the record in this matter. The Court sees no need to grant more extensive protective orders at this time or to expunge portions of the record. Matter sought to be expunged is relevant, for example, to a determination that the presumption of privilege is overcome.

Now, therefore, it is by the Court this 20th day of May, 1974,

ORDERED that the President's motion to quash be, and the same hereby is, denied; and it is

FURTHER ORDERED that on or before May 31, 1974, the President or any subordinate officer, official, or employee with custody or control of the documents or objects subpoenaed by the Special Prosecutor with leave of Court on April 18, 1974, shall deliver to the Court the originals of all subpoenaed items together with an index and analysis and copy tape recording as described in the foregoing opinion; and it is

FURTHER ORDERED that motions for protective orders and to expunge filed or raised orally in this matter, except to the extent already granted by the Court in proceedings heretofore, be, and the same hereby are, denied; and it is

96. On May 20, 1974 Jaworski wrote to Senator Eastland informing him that the President was challenging the right of the Special Prosecutor to bring an action against him to obtain evidence in United States v. Mitchell. Jaworski stated that this position contravened the express agreement made by Haig, after consultation with the President, that if Jaworski accepted the position of Special Prosecutor he would have the right to press legal proceedings against the President.

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96.1 Letter from Leon Jaworski to James Eastland, May 20, 1974 (received from Watergate Special Prosecution Force).....	1020

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

May 20, 1974

Honorable James O. Eastland
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C.

Dear Mr. Chairman:

When I appeared before your Committee during the hearings on the nomination of the Honorable William B. Saxbe to be Attorney General, I assured the Committee in response to a question by Senator Byrd that I would inform the Committee of any attempt by the President "to circumvent or restrict or limit" the jurisdiction or independence of the Special Prosecutor. I am constrained to advise you and the members of your Committee, consonant with this and other promises made when I testified at hearings before your Committee on the Special Prosecutor bill, that in recent days these events have occurred:

Following the issuance of a subpoena for White House tapes to be used as evidence in the trial of United States v. Mitchell, et al. (which are needed for prosecution purposes and perhaps to comply with the rights of the defendant under Supreme Court rulings), the President, through his counsel, filed a Motion to Quash the Subpoena.

Because of sensitive matters involved in our response to the Motion to Quash, I joined with White House counsel in urging Judge Sirica to conduct further proceedings in camera. After the court determined to hold further proceedings in camera, White House counsel for the first time urged the Court to quash the subpoena on the additional

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ground that the Special Prosecutor had no standing in court because the matter of his obtaining the tapes in question involved "an intra-executive dispute." As stated by counsel for the President in the argument before Judge Sirica, it is the President's contention that he has ultimate authority to determine when to prosecute, whom to prosecute, and with what evidence to prosecute. Judge Sirica has now ruled and I am released from in camera secrecy.

The crucial point is that the President, through his counsel, is challenging my right to bring an action against him to obtain evidence, or differently stated, he contends that I cannot take the President to court. Acceptance of his contention would sharply limit the independence that I consider essential if I am to fulfill my responsibilities as contemplated by the charter establishing this office.

The position thus taken by the President's counsel contravenes the express agreement made with me by General Alexander Haig, after consulting with the President, that if I accepted the position of Special Prosecutor, I would have the right to press legal proceedings against the President if I concluded it was necessary to do so. I so testified in the House Judiciary Committee hearing and in the hearings conducted by your Committee. Thereafter, at the suggestion of members of your Committee, I sent a copy of my testimony on this point to counsel for the President, Mr. J. Fred Buzhardt, who acknowledged its receipt without questioning my testimony. I should add that when my appointment was announced by Acting Attorney General Bork on November 1, 1973, he stated that as a part of my agreement to serve, it was "absolutely clear" that I was "free to go to court to press for additional tapes or Presidential papers," if I deemed it necessary.

You will recall, Mr. Chairman, that when I testified at the session of your Committee on the Special Prosecutor bill, the following exchange took place between us:

"The Chairman. You are absolutely free to prosecute anyone; is that correct?
 Mr. Jaworski. That is correct. And that is my intention.
 The Chairman. And that includes the President of the United States?
 Mr. Jaworski. It includes the President of the United States.
 The Chairman. And you are proceeding that way?
 Mr. Jaworski. I am proceeding that way."

(Part 2, page 571)

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Senator McClellan put the question to me this way:

"May I ask you now, do you feel that with your understanding with the White House that you do have the right, irrespective of the legal issues that may be involved -- that you have an understanding with them that gives you the right to go to court if you determine that they have documents you want or materials that you feel are essential and necessary in the performance of your duties, and in conducting a thorough investigation and following up with prosecution thereon, you have the right to go to court to raise the issue against the President and against any of his staff with respect to such documents or materials and to contest the question of privilege.

Mr. Jaworski. I have been assured that right and I intend to exercise it if necessary."

(Part 2, page 573)

Senator Hruska also examined me on this point as is shown by the following questions and answers:

"Senator Hruska. And it was agreed that there would be no restrictions or limitations, that even as to those items on the tapes, whether they were asked for or not, you would be given access to them.

However, if there would occur an impasse on that point on the availability of any material, that there was expressly, without qualification, reserved to you the right to go to the courts. So that it would be at a time when General Haig, acting on behalf of the President, or in his stead, would say no to this particular paper, I don't feel that you should have it, this has high national security and other characteristics, and if you felt constrained to differ with him at that point, you could go to court, and there would be no limitation in that regard?

"Mr. Jaworski. That is a correct statement.

Senator Hruska. That is your testimony?

Mr. Jaworski. Yes, sir.

Senator Hruska. So that by the charter and by your agreement and your discussions you are not to be denied access to the courts"

(Part 2, page 600)

When my Deputy, Henry S. Ruth, Jr., was testifying in connection with the Special Prosecutor bill, Senator Scott asked him the following question:

"Senator Scott. I imagine it may be clear that he has no doubt of his right to bring action in the courts against the Executive if he so deems it to be proper?

Mr. Ruth. Well, Senator, he understands his instructions are to pursue all of the evidence he needs, including to go to court if the evidence is not forthcoming."

(Part 2, page 518)

At the time of the Saxbe nomination hearings, Senator Byrd exacted the assurance from me that I would "follow the evidence wherever it goes, and if it goes to the Oval Office and to the President himself, I would pursue it with all my vigor." And at the same time, he obtained the assurance from Mr. Saxbe that he would give me full support in matters that were within the performance of my duty even if "there are allegations involving the President" (page 22 of the hearings before the Committee on the nomination of William B. Saxbe, December 12 and 13, 1973).

Of course, I am sure you understand, Mr. Chairman, that I am not for a moment suggesting that the President

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does not have the right to raise any defenses, such as confidential communications, executive privilege, or the like. It is up to the court, after hearing, to determine whether his defense is sound. But any claim raised by White House counsel on behalf of the President that challenges my right to invoke the judicial process against the President, as I am doing in an effort to obtain these tapes for use at the trial in U.S. v. Mitchell, et al. would make a farce of the Special Prosecutor's charter and is in contravention of the understanding I had and the members of your Committee apparently had at the time of my appointment.

In a letter to me from Mr. St. Clair, counsel for the President, Mr. St. Clair undertakes to circumvent the clear and unmistakable assurance given me by the President by contending that: "The fact that the President has chosen to resolve this issue by judicial determination and not by a unilateral exercise of his constitutional powers, is evidence of the President's good faith." Of course, under Mr. St. Clair's approach, this would make the assurance of the right to take the President to Court an idle and empty one. Counsel to the President, by asserting that ultimately I am subject to the President's direction in these matters, is attempting to undercut the independence carefully set forth in the guidelines, which were reissued upon my appointment with the express consent of the President. It is clear to me that you and the members of your Committee who were familiar with the public announcements of the President and the Acting Attorney General, did not construe them in so meaningless a manner (as is evident by the above referred to statements in questions that were propounded to me), and neither did I. To adopt Mr. St. Clair's version would give rise to this anomaly - "the President has no objection to the Special Prosecutor filing his action against him but once filed, the President will stop the Special Prosecutor from proceeding with it by having his counsel move to dismiss on the ground that the Special Prosecutor cannot sue him."

Judge Sirica in overruling this contention of the President in an opinion made public by the Court this afternoon, pointedly said:

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The Special Prosecutor's independence has been affirmed and reaffirmed by the President and his representatives, and a unique guarantee of unfettered operation accorded him: "the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress [the leaders of both Houses and the respective Committees on the Judiciary] and ascertaining that their consensus is in accord with his proposed action." The President not having so consulted, to the Court's knowledge, his attempt to abridge the Special Prosecutor's independence with the argument that he cannot seek evidence from the President by court process is a nullity and does not defeat the Court's jurisdiction.

Because the members of your Committee exacted from me the promise at the hearings that I would report a development of this nature, I am submitting this letter.

Respectfully yours,



LEON JAWORSKI
Special Prosecutor

cc: Members of the Senate
Committee on the Judiciary

Hon. John J. Sirica
United States District Judge

Hon. William B. Saxbe
Attorney General

Hon. Robert H. Bork
Solicitor General

General Alexander M. Haig, Jr.
Assistant to the President

James D. St. Clair, Esq.
Special Counsel to the President

97. On May 22, 1974 the President informed House Judiciary Committee Chairman Rodino that he declined to produce the tapes and documents covered by the Committee's subpoenas of May 15, 1974. The President asserted that the Committee had the full story of Watergate insofar as as it related to Presidential knowledge and Presidential actions.

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97.1 Letter from President Nixon to Chairman Rodino, May 22, 1974	1028

THE WHITE HOUSE

WASHINGTON

May 22, 1974

Dear Mr. Chairman:

This letter is in response to two subpoenas of the House of Representatives dated May 15, 1974, one calling for the production of tapes of additional Presidential conversations and the other calling for the production of my daily diary for extended periods of time in 1972 and 1973. Neither subpoena specifies in any way the subject matters into which the Committee seeks to inquire. I can only presume that the material sought must be thought to relate in some unspecified way to what has generally been known as "Watergate."

On April 30, 1974, in response to a subpoena of the House of Representatives dated April 11, 1974, I submitted transcripts not only of all the recorded Presidential conversations that took place that were called for in the subpoena, but also of a number of additional Presidential conversations that had not been subpoenaed. I did this so that the record of my knowledge and actions in the Watergate matter would be fully disclosed, once and for all.

Even while my response to this original subpoena was being prepared, on April 19, 1974, my counsel received a request from the Judiciary Committee's counsel for the production of tapes of more than 140 additional Presidential conversations -- of which 76 were alleged to relate to Watergate -- together with a request for additional Presidential diaries for extended periods of time in 1972 and 1973.

The subpoenas dated May 15 call for the tapes of the first 11 of the conversations that were requested on April 19, and for all of the diaries that were requested on April 19. My

- 2 -

counsel has informed me that the intention of the Committee is to also issue a series of subpoenas covering all 76 of the conversations requested on April 19 that are thought to relate to Watergate. It is obvious that the subpoenaed diaries are intended to be used to identify even more Presidential conversations, as a basis for yet additional subpoenas.

Thus, it is clear that the continued succession of demands for additional Presidential conversations has become a never-ending process, and that to continue providing these conversations in response to the constantly escalating requests would constitute such a massive invasion into the confidentiality of Presidential conversations that the institution of the Presidency itself would be fatally compromised.

[The Committee has the full story of Watergate, in so far as it relates to Presidential knowledge and Presidential actions. Production of these additional conversations would merely prolong the inquiry without yielding significant additional evidence. More fundamentally, continuing ad infinitum the process of yielding up additional conversations in response to an endless series of demands would fatally weaken this office not only in this Administration but for future Presidencies as well.

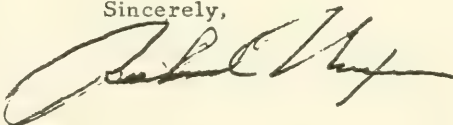
[Accordingly, I respectfully decline to produce the tapes of Presidential conversations and Presidential diaries referred to in your request of April 19, 1974, that are called for in part in the subpoenas dated May 15, 1974, and those allegedly dealing with Watergate that may be called for in such further subpoenas as may hereafter be issued.

However, I again remind you that if the Committee desires further information from me about any of these conversations

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or other matters related to its inquiry, I stand ready to answer, under oath, pertinent written interrogatories, and to be interviewed under oath by you and the ranking Minority Member at the White House.

Sincerely,

A handwritten signature in dark ink, appearing to be "R. Nixon", written in a cursive style.

The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C.

98. On May 30, 1974 the House Judiciary Committee issued a subpoena to the President to produce documents and tape recordings of specified conversations involving the President and Haldeman, Ehrlichman, Dean, Colson and Petersen.

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98.1 Subpoena to President Richard M. Nixon, House Judiciary Committee, May 30, 1974.....	1032

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon

Richard M. Nixon, President of the United States of America, or any
subordinate officer, official or employee with custody or control of
the things described in the attached schedule,

to be and appear before the Committee on the Judiciary

Committee of the House of Representatives of the United States, of which the Hon.

Peter W. Rodino, Jr. is chairman, and to bring with
him the things specified in the schedule attached hereto and made a part
hereof,

in their chamber in the city of Washington, on or before

June 10, 1974, at the hour of 10:00 A.M.

produce and deliver said things to said Committee, or their
then and there to certify touching matters of inquiry committed to said Committee, and he is
duly authorized representative, in connection with the Committee's investi-
gation authorized and directed by
H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this

30th day of May, 1974.


Peter W. Rodino, Jr.

Chairman.

Attest:


Clerk.

98.1 SCHEDULE OF THINGS REQUIRED TO BE PRODUCED PURSUANT TO SUBPOENA

SCHEDULE OF THINGS REQUIRED TO BE PRODUCED
PURSUANT TO SUBPOENA OF THE COMMITTEE ON THE JUDICIARY

A. All tapes, dictabelts, other electronic and mechanical recordings, transcripts, memoranda, notes and other writings and things relating to the following conversations:

1. Meeting on the morning of November 15, 1972 among or between Mr. Haldeman, Mr. Ehrlichman and Mr. Dean in the President's office at Camp David.
2. Conversation in which the President participated after December 8, 1972 (the date Mr. Hunt's wife died) during which there was a discussion that a commutation of the sentence for Mr. Hunt could be considered on the basis of Mr. Hunt's wife's death.
3. Meeting and telephone conversation on January 5, 1973 between the President and Mr. Colson from 12:02 to 1:02 p.m. and from 7:38 to 7:58 p.m. respectively.
4. Meetings between the President and Mr. Colson on February 13, 1973 from 9:48 to 10:52 a.m. and on February 14, 1973 from 10:13 to 10:49 a.m.
5. Meeting between the President and Mr. Dean on February 27, 1973 from 3:55 to 4:20 p.m.
6. Conversations on March 1, 1973 between the President and Mr. Dean, as follows:

9:18 - 9:46 a.m.	Meeting between the President and Mr. Dean
------------------	--

10:36 - 10:44 a.m.	Meeting between the President and Mr. Dean (Mr. Kissinger was present until 10:37 a.m.)
--------------------	---

1:06 - 1:14 p.m.	Meeting between the President and Mr. Dean
------------------	--

7. Meeting between the President and Mr. Dean on March 6, 1973 from 11:49 a.m. to 12:00 p.m.

98.1 SCHEDULE OF THINGS REQUIRED TO BE PRODUCED PURSUANT TO SUBPOENA

8. Telephone conversations between the President and Mr. Colson on March 16, 1973, from 7:53 to 8:12 p.m., and on March 19, 1973, from 8:34 to 8:58 p.m.
9. Conversations on March 20, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:

10:47 a.m. -	Meeting between the President
12:10 p.m.	and Mr. Haldeman (Mr. Ehrlichman present from 11:40 a.m. - 12:10 p.m.)

4:26 - 5:39 p.m.	Meeting between the President and Mr. Ehrlichman
------------------	---

6:00 - 7:10 p.m.	Meeting between the President and Mr. Haldeman
------------------	---

10. Conversations on March 21, 1973 between the President and Mr. Ehrlichman and the President and Mr. Colson, as follows:

9:15 - 10:12 a.m.	Meeting between the President and Mr. Ehrlichman
-------------------	---

7:53 - 8:24 p.m.	Telephone conversation between the President and Mr. Colson
------------------	--

11. Meeting between the President and Mr. Haldeman on March 22, 1973 from 9:11 to 10:35 a.m.
12. Telephone conversation between the President and Mr. Colson on April 12, 1973 from 7:31 to 7:48 p.m.
13. Two telephone conversations between Mr. Ehrlichman and Mr. Gray on April 15, 1973 between 10:16 and 11:15 p.m.
14. Telephone conversation between the President and Mr. Dean on April 17, 1973 from 9:19 to 9:25 a.m.
15. Conversations on April 18, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:

- | | |
|--------------------|---|
| 12:05 - 12:20 a.m. | Telephone conversation between the President and Mr. Haldeman |
| 3:05 - 3:23 p.m. | Meeting between the President and Mr. Ehrlichman |
| 6:30 - 8:05 p.m. | Meeting among the President, Mr. Ehrlichman and Mr. Haldeman |
16. Conversations on April 19, 1973 among or between the President, Mr. Haldeman, Mr. Ehrlichman and Mr. Petersen as follows:
- | | |
|--------------------|---|
| 9:31 - 10:12 a.m. | Meeting among the President, Mr. Haldeman and Mr. Ehrlichman |
| 10:12 - 11:07 a.m. | Meeting between the President and Mr. Petersen |
| 1:03 - 1:30 p.m. | Meeting between the President and Mr. Ehrlichman |
| 5:15 - 5:45 p.m. | Meeting between the President and Mr. Ehrlichman |
| 9:37 - 9:53 p.m. | Telephone conversation between the President and Mr. Haldeman |
| 10:54 - 11:04 p.m. | Telephone conversation between the President and Mr. Ehrlichman |
17. Conversations on April 20, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:
- | | |
|--------------------|---|
| 11:07 - 11:23 a.m. | Meeting between the President and Mr. Haldeman |
| 12:15 - 12:34 p.m. | Meeting among the President, Mr. Haldeman and Mr. Ehrlichman (Mr. Kissinger was present until 12:16 p.m.) |
18. Conversations on April 25, 1973 among or between the President, Mr. Haldeman, Mr. Ehrlichman, Mr. Wilson and Mr. Strickler, as follows:

98.1 SCHEDULE OF THINGS TO BE PRODUCED PURSUANT TO SUBPOENA

- | | |
|---|--|
| approximately 9:25 -
approximately
10:45 a.m. | Meeting among the President, Mr.
Wilson and Mr. Strickler |
| 11:06 a.m. -
1:55 p.m. | Meeting among the President, Mr.
Haldeman and Mr. Ehrlichman |
| 4:40 - 5:35 p.m. | Meeting between the President and
Mr. Haldeman (Mr. Hart present
from 5:30 to 5:32 p.m.) |
| 6:57 - 7:14 p.m. | Téléphone conversation between
the President and Mr. Haldeman |
| 7:17 - 7:19 p.m. | Telephone conversation between
the President and Mr. Ehrlichman |
| 7:25 - 7:39 p.m. | Telephone conversation between
the President and Mr. Ehrlichman |
| 7:46 - 7:53 p.m. | Telephone conversation between
the President and Mr. Haldeman |
19. Conversations on April 26, 1973 among or between the President, Mr. Haldeman and Mr. Ehrlichman, as follows:
- | | |
|-------------------|--|
| 8:55 - 10:24 a.m. | Meeting between the President and
Mr. Haldeman |
| 3:59 - 9:03 p.m. | Meeting between the President and
Mr. Haldeman (Mr. Ehrlichman was
present from 5:57 to 7:14 p.m.) |
20. Telephone conversations on June 4, 1973 between the President and Mr. Haldeman from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m.

- B. All papers and things (including recordings) prepared by, sent to, received by or at any time contained in the files of, H. R. Haldeman, John D. Ehrlichman, Charles W. Colson, John Dean, III and Gordon Strachan to the extent that such papers or things relate or refer directly or indirectly to the break-in and electronic surveillance of the Democratic National Committee Headquarters in the Watergate office building during May and June of 1972 or the investigations of that break-in by the Department of Justice, the Senate Select Committee on Presidential Campaign Activities, or any other legislative, judicial, executive or administrative body, including members of the White House staff.

99. On May 31, 1974 the court-appointed panel of experts filed their final report on the 18-1/2 minute gap on the June 20, 1972 EOB tape. The report concluded that: (i) the erasing and recording producing the buzz on the tape were done on the examined tape, which was probably the original tape, (ii) the Uher 5000 recorder machine used by Woods for transcription probably produced the buzz, (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and, on at least five occasions, required hand operation of the controls of the Uher 5000 recorder to produce the erasures and recording, and (iv) the erased portion of the tape originally contained speech which, because of the erasures and rerecording, could not be recovered. The panel stated that in making its final report it had considered suggestions and alternative interpretations that differed markedly from the panel's and had discussed the material with technical advisors employed by counsel for the President.

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99.1 The EOB Tape of June 20, 1972, Report on a Technical Investigation Conducted for the U.S. District Court for the District of Columbia by the Advisory Panel on White House Tapes, May 31, 1974.....	1038

The EOB Tape of June 20, 1972

Report on a Technical Investigation

Conducted for the U.S. District Court for the District of Columbia
by the Advisory Panel on White House Tapes

May 31, 1974

Advisory Panel
on White House Tapes
May 31, 1974

Judge John J. Sirica
United States District Court
for the District of Columbia
Washington, D.C.

Dear Judge Sirica:

We are pleased to submit herewith the final report on our technical investigation of a tape recorded in the Executive Office Building on June 20, 1972. This is the tape on which an eighteen and one-half minute section of buzz appears.

The report itself occupies the first fifty pages of this volume. The remaining pages contain appended material concerning our study, followed by a set of detailed Technical Notes on the scientific techniques we used and the test results we obtained.

Respectfully yours,

Richard H. Bolt
Richard H. Bolt

Franklin S. Cooper
Franklin S. Cooper

James L. Flanagan
James L. Flanagan

John G. McKnight
John G. McKnight

Thomas G. Stockham, Jr.
Thomas G. Stockham, Jr.

Mark R. Weiss
Mark R. Weiss

SUMMARY

A tape recording of conversations held on June 20, 1972 in the Executive Office Building contains a section lasting eighteen and one-half minutes during which buzz sounds but no discernible speech sounds are heard. This report describes work done to find out what caused the buzz section.

In November, 1973, Chief Judge John J. Sirica of the U. S. District Court for the District of Columbia appointed an Advisory Panel of persons nominated jointly by the White House and the Special Prosecution Force, and asked the Panel to study relevant aspects of the tape and the sounds recorded on it. In performing this task the Panel has made extensive tests on the tape itself, on electrical signals picked up from the tape, and on recording equipment that was used or might have been used in recording the speech and buzz sounds on the tape. Through analysis of the test results and simulation of alternative ways in which the buzz section might have been produced, the Panel has arrived at a single explanation that accounts for the buzz section observed on the Evidence Tape.

The Panel found no basis for doubting the authenticity of the speech recording. The recording appeared to be an original one made on a Sony 800B recorder, the type reportedly used in the Executive Office Building. The tape showed no signs of splicing, tampering, or copying. The buzz section was made directly on this tape, probably by the Uher 5000 recorder labeled Government Exhibit 60. The buzz sound probably originated in electrical noise on the electric power line that powered the recorder. Any speech sounds previously recorded on this section of the tape were erased in conjunction with the recording process, as is normal in recorders of this kind. The erasure is so strong as to make recovery of the original conversation virtually impossible.

The buzz section, which sounds much the same throughout, contains many "events" such as clicks, pops, changes in loudness, and gaps with no sound. The Panel traced most of these events to specific operations of electrical and mechanical elements of the recorder. This information together with data on the tape motions and recorder characteristics enabled the Panel to infer things that must have been done with the recorder to produce the events observed on the tape. No explanation of the buzz section based on malfunction of the recorder can account for the entire set of observed data and the patterns they form. The only completely plausible explanation found is one that requires keyboard operations of a normally-operating machine. Five or more sets of such operations are involved in the explanation.

This report draws no inferences about such questions as whether the erasure and buzz were made accidentally or intentionally, or when, or by what person or persons. The report does provide a solid basis in experimental fact for concluding that the erasure and the recording of buzz required several operations of the pushbuttons on the control keyboard of the Uher 5000 recorder.

PREFACE

This report concerns work undertaken to examine the authenticity and integrity of tape recordings made in the offices of the President of the United States of America.

In November 1973 Chief Judge John J. Sirica of the U. S. District Court for the District of Columbia appointed an Advisory Panel to undertake this work and specified their task in the following words:

"(a) By judgment entered on August 29, 1973, this Court directed production of various tape recordings and other materials covered by a grand jury subpoena duces tecum issued to President Richard M. Nixon, and this order was upheld by a judgment of the United States Court of Appeals for the District of Columbia Circuit entered on October 12, 1973;

(b) On October 23, 1973, counsel for the White House stated that there would be full compliance with the order of the Court.

(c) On October 30, 1973, counsel for the White House informed the Court that two subpoenaed conversations had not been recorded and on November 21, 1973, further informed the Court that a gap of approximately 18-minutes duration existed in a third subpoenaed conversation;

(d) The Court determined that it was in the interest of justice to conduct full inquiry into these developments and that it would materially aid the Court's resolution of this inquiry to secure the assistance of experts skilled in examination of such tape recordings;

(e) Counsel for the President and the Special Prosecutor as counsel for the grand jury agreed upon the selection and nomination of six technical experts to examine various tape recordings and to report their findings to the Court;

(f) The Court accepted the nominations of counsel for the respective parties and on November 21, 1973, appointed Richard H. Bolt, Franklin Cooper, James L. Flanagan, John G. (Jay) McKnight, Thomas G. Stockham, Jr., and Mark R. Weiss as an advisory panel of expert witnesses to assist the Court;"

[Excerpt from an Order
Relating to Expert Witnesses,
Misc. No. 47-73, December 20, 1973]

The Advisory Panel was chosen to cover a range of technical capabilities relevant to the task of examining the tapes. The six members of the Advisory Panel met together first on Sunday, November 18, 1973, in the Executive Office Building and there attended a briefing session conducted by representatives of counsel for the President and the Special Prosecutor. Immediately thereafter the Panel undertook the preparation of a proposed plan of work and submitted it to the Court on November 21, 1973.

Shortly after the Panel was appointed and commenced its study of the tapes, the Court suggested that the tape recorded in the Executive Office Building on June 20, 1972, was of special interest and would deserve priority attention. In response, the Panel devoted most of its attention to this tape during the first months of its work.

On December 13, 1973, the Panel submitted an interim report on its work and its provisional conclusions about the source of the buzz that appeared on the tape of June 20th.

By January 10, 1974, the Panel had arrived at firm answers to the central questions about the tape of June 20, 1972. Because the Court wished to have this information at the earliest possible time, the Panel submitted a summary report on January 15, 1974, containing the principal conclusions together with brief indications of the nature of the evidence that led to the conclusions. Many added details concerning the Panel's investigation of this tape were reported in sessions of the Court on January 15 and 18, 1974.

The Panel then turned to the preparation of a full report of its tests and analyses concerning the tape of June 20, 1972. Concurrently, in accord with instructions from the Court, the Panel initiated a preliminary study of several other tapes.

After the Panel's conclusions were made public, several persons volunteered ideas and suggestions to the Court, or to one of the legal offices involved in this matter, or directly to members of the Panel. Some of these volunteered submissions described alternative interpretations that differed markedly from the Panel's conclusions. The Panel already had considered several alternatives and believed that its experimental results firmly supported the conclusions made public on January 15.

-iii-

Nonetheless, the Panel, in keeping with its responsibility to the Court and the public in this unusual undertaking decided to look carefully into every proffered suggestion that might at all contribute to a fuller understanding of what happened to the tape. The Panel took on this added work even though it would delay completion of the final report on the tape of June 20, 1972.

By mid-February the Panel had made intensive studies and tests of proposed alternatives, with results that confirmed the original conclusions. These conclusions and the data and considerations supporting them had been discussed from time to time with representatives of counsel for both parties. In late February and early March, at the request of counsel for the President and with the approval of the Court, this material was discussed also with technical advisors employed by counsel for the President. These various discussions led to further analysis of the origin of certain clicks already noted on the tape of June 20, 1972, and thereby to additional confirmation of one of the Panel's original conclusions.

Completion of these studies and the writing up of results occupied most of the Panel's efforts from March to early May, when we submitted a draft report to the Court. Subsequently we received comments on the draft and gave them careful consideration in preparing this final report.

Scope and Organization of this Report

This report pulls together the results of all our work on the tape recorded in the Executive Office Building on June 20, 1972. Although other tapes are not discussed in this document, the tests and methods of analysis described here are applicable also to our examination of other tapes.

Our study of authenticity and integrity pertains to the entire tape, which contains about six hours of material. However, our preliminary results led us to concentrate attention on a section of the tape containing 18.5 minutes of buzz and other sounds not found in the rest of the tape. Our conclusions relate mainly to the way in which this buzz section was produced.

In this Report we document the conclusions we presented to the Court on January 15, 1974. This volume also contains a large amount of information not reported previously. The added information includes detailed descriptions of all the tests and analyses we have made, full compilations of resulting data, and reports on experiments we have performed to check certain alternative hypotheses regarding the origin of the buzz section.

The Report contains four chapters. The first one describes our general approach to the task: our use of scientific methods to make measurements and hypotheses leading to a simulation of the process that produced the buzz section. Chapter II describes in detail the main methods of measurement and analyses that we used. In Chapter III we show how the results of many tests combine to explain essentially all the "events" in the buzz section. The final chapter summarizes the data and reasoning by which we arrived at each of the seven main conclusions.

Following the Report, this volume contains appended material and several Technical Notes. These Notes, which actually make up the bulk of material in the volume, comprehensively document the tests, analyses, and data. The Technical Notes are addressed to persons who wish to study our results in scientific detail.

In the Report itself, we have minimized technical complexity and terminology in order to explain as simply as possible what we did and how we reached our conclusions. We hope that the interested person who is not a technical specialist will gain from this Report an accurate, interpretive understanding of our findings.

100. On May 31, 1974 the President filed a claim of constitutional privilege with respect to a grand jury subpoena issued February 20, 1974 seeking the production of correspondence between the President and former FCRP Chairman Maurice Stans regarding selections and nominations for government offices including ambassadorships. The President asserted that, excluding the records relating to four named individuals as to whom he waived the privilege, it would be inconsistent with the public interest to produce the records.

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Court to Study Stans Data Sought in Jaworski Inquiry

By BEN A. FRANKLIN

Special to The New York Times

WASHINGTON, May 17 — President Nixon asserted the doctrine of executive privilege again today in an effort to block a Government subpoena for correspondence between himself or his White House aides and Maurice H. Stans, who was his chief fund raiser in the 1972 campaign.

There were repeated indications, however, that United States District Judge George L. Hart Jr. might overrule the latest attempt to withhold evidence from the office of the special Watergate prosecutor, Leon Jaworski.

Judge Hart said he would review the letters himself next week, and would then probably apply a recent decision by Judge John J. Sirica that overruled such claims of privilege.

Lawyers from Mr. Jaworski's staff told Judge Hart that they were seeking evidence for a Federal Grand jury here that has been investigating Mr. Stans' activities as chairman of the Finance Committee to Re-elect the President, the principal fund-raising organization of Mr. Nixon's 1972 campaign.

Evidence of Deals

Thomas F. McBride, one of the lawyers, said the prosecutors were looking for "evidence of any quid pro quo" offers of diplomatic or other Government posts or favors in return for contributions solicited by Mr. Stans.

Asked outside the courtroom whether the disputed letters contained any such references to "quid pro quo" arrangements with Nixon contributors, John M. Facciola, one of Mr. Stans' lawyers, replied, "I don't have any comment on that."

The assertion of privilege was contained in a letter from the President that Robert W. Barker, another Stans lawyer, handed Judge Hart today during a hearing on the special prosecutor's three-month attempt to enforce a subpoena for files and documents kept by Mr. Stans at the campaign finance committee office.

The subpoena for the files of Mr. Stans, Mr. Nixon's former Secretary of Commerce, was first served by the special prosecutor's office last Feb. 25.

Testimony at today's hearing disclosed that immediately on learning of the subpoena, Mr. Stans' lawyers went for the keys to filing cabinets in which the subpoenaed papers were kept, and that Mr. Stans then asserted that the files were "personal" and therefore protected by his Fifth Amendment right not to incriminate himself.

Assistant Subpoenaed

The person named in the February subpoena, Paul F. Felt, insisted that one of his clerks, a Stans assistant, was subpoenaed to appear at the hearing. Mr. Felt said that an unpaid finance committee aide had appeared before the grand jury.

but without the documents, saying that they were no longer in his custody.

In an attempt today to persuade Judge Hart that the Stans documents are, indeed, "official" papers subject to subpoena, Mr. McBride and Charles F. C. Ruff, Jaworski's staff prosecutors, questioned several witnesses under oath, including Herbert W. Kalmbach of Newport Beach, Calif., Mr. Nixon's former personal lawyer and a key fund raiser for him under Mr. Stans.

Mr. Kalmbach pleaded guilty last February to running an illegal Congressional campaign fund in 1970 that secretly raised millions of dollars for the Republicans and of promising another donor in return for \$100,000 contribution.

Mr. Kalmbach said today that he had "asked Mr. Stans for his assistance in seeing that the commitment [the ambassadorship] was met."

Mr. Stans was acquitted on April 28 of joining in a conspiracy with former Attorney General John N. Mitchell to obtain favorable treatment for Robert Vesco, a secret contributor of \$200,000 in cash.

Papers Torn Up

On Mr. Stans' behalf, Mr. Barker asserted repeatedly today that several of the documents described by Mr. Kalmbach and other witnesses today "no longer exist." He also told the court that other material, among Mr. Stans' "personal" papers had been "accidentally" torn up, and later patched together with Scotch tape.

The Government subpoena, covering his files dating from 1968, seeks Mr. Stans' telephone lists, appointment calendars, "ambassador lists" and other special contributor lists recommending appointments to Government posts, "political files" and a so-called "S list" of noncontributors.

Mr. McBride told Judge Hart that the last was "a list of persons solicited who either failed to contribute or failed to contribute enough."

Although Mr. Stans' lawyers insisted that one of his clerks, a Stans assistant, was subpoenaed to appear at the hearing, Mr. Felt said that an unpaid finance committee aide had appeared before the grand jury.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
MAY 31 1974
JAMES F. DAVEY, Clerk

In Re Grand Jury Subpoena
Duces Tecum Issued to The
Custodian Of Records, Finance
Committee To Re-Elect The
President, Or His Successor

Misc. 74-48

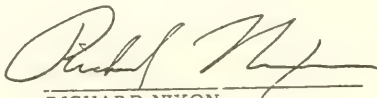
FORMAL CLAIM OF PRIVILEGE

I, Richard Nixon, President of the United States, hereby represent to the Court that materials covered by the subpoena issued February 20, 1974, are within the constitutional privilege of the President to refuse to disclose confidential information when disclosure would be contrary to the public interest.

The items sought include communications containing recommendations to the President with respect to personnel selections and nominations. Accordingly, I have determined that it would be inconsistent with the public interest to produce these items.

As a result of certain unusual circumstances, I am waiving privilege in connection with advise and recommendations relating to four specific candidates for nomination for ambassadors: Mrs. Ruth Farcas, Mr. Vincent DeRolet, Mr. C. V. Whitney and Mr. Fyfe Symington.

Respectfully submitted,



RICHARD NIXON
President of the United States

WATERGATE SPECIAL PROSECUTION FORCE

United States Department of Justice

1425 K Street, N.W.

Washington, D.C. 20005

March 13, 1974

DV

Received -
MAR 13 1974

John Doar, Esquire
Special Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear John:

Pursuant to the request you made in our meeting on March 7, I am enclosing a list of those materials that the President has refused to provide this office in connection with our investigations. (This list does not include requests still pending.)

We recognize, of course, that the information enclosed would be subject to subpoena, and, accordingly, we see no reason to require the Committee to follow that course. We should add, however, that in our view this information can be provided without violating any legal constraints or the appropriate limits of the separation of powers.

Also, I trust that the enclosed list will be handled by the Committee and its staff in accordance with the rules and procedures adopted by the Committee on February 22, 1974.

Sincerely,

Leon Jaworski

LEON JAWORSKI
Special Prosecutor

Enclosure

DV

SCHEDULE OF MATERIALS REQUESTED BY
THE SPECIAL PROSECUTOR FROM THE
WHITE HOUSE IN CONNECTION WITH GRAND
JURY INVESTIGATIONS AND REFUSED AS
OF MARCH 11, 1974

OV

A. INVESTIGATION INTO THE ALLEGED WATERGATE
COVER-UP CONSPIRACY

Tape recordings of the following conversations:

1. Telephone conversation on June 20, 1972, between the President and Mr. Colson from 11:33 p.m. to 12:05 a.m. of June 21, 1972.
2. Three meetings on June 23, 1972, between the President and Mr. Haldeman from 10:04 to 10:39 a.m., from 1:04 to 1:13 p.m., and from 2:20 to 2:45 p.m.
3. Meetings between the President and Mr. Colson on February 13, 1973, from 9:48 to 10:52 a.m. and on February 14, 1973, from 10:13 to 10:49 a.m.
4. Meetings between the President and Mr. Haldeman on March 20, 1973, from 10:47 a.m. to 12:10 p.m. and from 6:00 to 7:10 p.m.
5. Meeting on March 21, 1973, between the President and Mr. Ehrlichman from 9:15 a.m. to 10:12 a.m.
6. Telephone conversation between the President and Mr. Colson on March 21, 1973, from 7:53 to 8:24 p.m.
7. Meeting on March 22, 1973, between the President and Mr. Haldeman from 9:11 to 10:35 a.m.
8. Meeting on March 27, 1973, from 11:10 a.m. to 1:30 p.m. between Mr. Ehrlichman and the President, with Mr. Haldeman present from 11:35 a.m. on.
9. Meeting on March 30, 1973, from 12:02 to 12:18 p.m. between Mr. Ehrlichman and the President. Mr. Ziegler may also have been present.
10. Telephone conversation on April 12, 1973, from 7:31 to 7:45 p.m. between the President and Mr. Colson.
11. Meeting on April 14, 1973, from 8:55 to 11:31 a.m. between Mr. Ehrlichman and the President in the President's EOB office. The President's daily diary shows that Mr. Haldeman was present from 9:00 to 11:30 a.m.

OV

DV

12. Meeting on April 14, 1973, from 2:24 to 3:55 p.m. between Messrs. Ehrlichman and Haldeman and the President in the Oval Office.

13. Meeting on April 14, 1973, from 5:15 to 6:45 p.m. between Messrs. Ehrlichman and Haldeman and the President in the President's EOB office.

14. Telephone call on April 14, 1973, between the President and Mr. Ehrlichman from 11:22 to 11:53 p.m.

15. Meeting on April 15, 1973, from 1:12 to 2:22 p.m. between Mr. Kleindienst and the President in the President's EOB office.

16. Two telephone conversations on April 15, 1973, between 10:16 and 11:15 p.m. between Mr. Ehrlichman and Mr. Gray.

17. Two meetings between Messrs. Haldeman and Ehrlichman (or each) with the President on April 16, 1973, the first from 9:50 to 9:59 a.m., and the second from 10:50 to 11:04 a.m.

18. Meeting on April 19, 1973, from 8:26 to 9:32 p.m. between the President, Mr. John J. Wilson, and Mr. Frank H. Strickler in the President's EOB office.

19. Telephone conversation on April 19, 1973, from 9:37 to 9:53 p.m. between the President and Mr. Haldeman.

20. Telephone conversation on April 19, 1973, from 10:54 to 11:04 p.m. between the President and Mr. Ehrlichman.

21. Two telephone calls between the President and Mr. Haldeman on June 4, 1973, from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m.

B. INVESTIGATION INTO THE DAIRY INDUSTRY CONTRIBUTIONS

1. Any tape recordings, transcripts, memoranda, notes, or other writings relating to conversations between the President and Secretary Connally during the period February 15, 1971, to March 25, 1971. Information developed by this office indicates that in addition to the March 23, 1971, conversations between Secretary Connally and the President, Secretary Connally spoke to the President on March 11 (twice), March 16, March 18, and March 25, 1971.

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2. All documents, memoranda, and correspondence in the files of Murray M. Chotiner relating to:

(a) Political contributions received or expected to be received from the Associated Milk Producers, Inc., the Trust for Agricultural Political Education, the Mid-America Dairymen, Agricultural and Dairy Educational Political Trust, Dairymen, Inc., and the Trust for Special Political Agricultural Community Education;

(b) The Section 22 Tariff Commission Recommendations proposed by the Tariff Commission on September 21, 1970, relating to dairy products;

(c) The milk price support level announced on March 12, 1971, and March 25, 1971; and

(d) The antitrust suit filed by the United States on February 1, 1972, against the Associated Milk Producers, Inc.

3. Any tape recordings, transcripts, memoranda, notes, and other writings relating to a meeting between Attorney General John Mitchell, Mr. Lee Nunn, and the President held on May 5, 1971.

C. INVESTIGATION INTO CAMPAIGN CONTRIBUTIONS IN CONNECTION WITH APPOINTMENT TO GOVERNMENT OFFICE

1. All letters, memoranda, or lists sent by Maurice H. Stans to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to a list of recommendations sent during or soon after the 1972 campaign and election period, and letters or memoranda addressed to Frederic V. Malek, which are believed to be in the files of the White House Personnel Office, similar communications sent by Mr. Stans to Peter M. Flanigan, which are believed to be in Mr. Flanigan's files or the Personnel Office files, and similar communications sent by Mr. Stans to Harry R. Haldeman, which are believed to be in Mr. Haldeman's files in Room 522 of the White House.

DV

2. All letters, memoranda, or lists sent by Herbert W. Kalmbach to the White House which recommend or discuss persons for consideration for Presidential appointment, including but not limited to those sent to Mr. Haldeman, Mr. Flanigan, Mr. Malek, and others in the Personnel Office.

3. All correspondence, memoranda, documents, or other writings pertaining to the consideration for Presidential appointment, appointment, reappointment, or transfer of J. Fife Symington, Jr., Vincent W. deRoulet, Dr. Ruth Farkas, Cornelius V. Whitney, John Safer, Daniel Terra, Kingdon Gould, Jr., Florenz Ourisman, Dr. Jacob O. Kamm, and Martin Sereteau.

4. A list of recommendations, similar to that described in paragraph 1 above, prepared by Mr. Stans during or soon after the 1968 campaign and election period, access to which is necessary because of its relevance both as background to a complete investigation of this matter and to certain actual or proposed Presidential appointments in 1970 or 1971.

D. INVESTIGATION INTO BREAK-IN AT OFFICE OF DR. FIELDING

Access to the files of John D. Ehrlichman.

101. On June 3, 1974 Charles Colson pleaded guilty by negotiated plea to a one-count information charging obstruction of justice in connection with the trial of the Ellsberg case by devising and implementing a scheme to defame and destroy the public image and credibility of Ellsberg and his defense counsel with intent to influence, obstruct and impede the conduct and outcome of the trial. Colson agreed to provide statements under oath and to produce all relevant documents in his possession upon request of the Special Prosecutor and testify as a witness for the United States in any and all cases with respect to which he may have information. In return the Special Prosecutor agreed to dismiss all charges against Colson in United States v. Mitchell and United States v. Ehrlichman.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

CHARLES W. COLSON,

Defendant.

Criminal No. 74-116

Violation of 18 U.S.C.
§1503 (Obstruction of
Justice.)

INFORMATION

The United States of America, by its Attorney, the Special Prosecutor, Watergate Special Prosecution Force, charges:

1. At all times material herein, up to on or about March 10, 1973, CHARLES W. COLSON, the DEFENDANT, was acting in the capacity of an officer and employee of the United States Government, as Special Counsel to the President of the United States, Richard M. Nixon.

2. On or about June 28, 1971, and for a period of time thereafter, in the District of Columbia and elsewhere, CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal trial of Daniel Ellsberg under indictment in the case of United States v. Russo, Criminal Case No. 9373, United States District Court, Central District of California, by devising and implementing a scheme to defame and destroy the public image and credibility of Daniel Ellsberg and those engaged in the legal

defense of Daniel Ellsberg, with the intent to influence, obstruct, and impede the conduct and outcome of the criminal prosecution then being conducted in the United States District Court for the Central District of California.

3. The aforesaid scheme by which CHARLES W. COLSON, the DEFENDANT, unlawfully, willfully and knowingly did corruptly endeavor to influence, obstruct and impede the due administration of justice in connection with the criminal prosecution of Daniel Ellsberg consisted of the following acts:

(1) In July and August 1971, the DEFENDANT, and others unnamed herein, endeavored to and did release defamatory and derogatory allegations concerning one of the attorneys engaged in the legal defense of Daniel Ellsberg for the purpose of publicly disseminating said allegations, the known and probable consequences of which would be to influence, obstruct, and impede the conduct and outcome of the criminal prosecution of Daniel Ellsberg.

(2) In July and August 1971, the DEFENDANT, and others unnamed herein, endeavored to obtain, receive and release confidential and derogatory information concerning Daniel Ellsberg, including information from the psychiatric files of Daniel Ellsberg, for the purpose of publicly disseminating said information, the known and probable consequences of which would be to influence, obstruct, and impede the conduct and outcome of the criminal prosecution of Daniel Ellsberg.

(In violation of Title 18, United States Code
Section 1503.)

Respectfully submitted,

LEON JAWORSKI
Special Prosecutor
Watergate Special Prosecution
Force
1425 K Street, N.W.
Washington, D. C. 20005
Attorney for the United States

DATED: June 3, 1974

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

May 31, 1974

David I. Shapiro, Esq.
Dickstein, Shapiro & Morin
1735 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Shapiro:

On the understandings specified below, the United States will accept a guilty plea from your client, Charles W. Colson, to a one-count information charging him with obstructing justice in connection with the criminal prosecution of Daniel Ellsberg, in violation of Title 18, United States Code, Section 1503. This will dispose of all pending charges in the cases of United States v. Ehrlichman, et al., Criminal No. 74-116, and United States v. Mitchell, et al., Criminal No. 74-110. It will also dispose of all potential charges against your client which might otherwise arise out of those matters which are or have been under active investigation by the Watergate Special Prosecution Force.

This disposition is predicated on the understanding that the United States will move for leave to file a dismissal of all pending charges against Mr. Colson as set forth in the indictment filed March 1, 1974, Criminal No. 74-116, charging Mr. Colson, among others, with conspiracy and obstructing justice, and the indictment filed March 7, 1974, Criminal No. 74-116, charging Mr. Colson, among others, with conspiracy against rights of citizens. This disposition will not bar prosecution for any false or misleading testimony given hereafter.

This understanding is also predicated upon the fact that Mr. Colson will immediately provide statements under oath and will produce all relevant documents in his possession upon the request of the Watergate Special Prosecution Force. He may be required to testify as a witness for the United States in any and all cases with respect to which he may have relevant information.

The United States will make no recommendation concerning Mr. Colson's sentencing but will bring to the attention of the probation authorities and the Court information concerning Mr. Colson relating to those cases in which Mr. Colson is presently charged. The United States will join with you in urging that Mr. Colson be permitted to remain on recognizance pending sentencing. The United States, if requested, will provide to any investigative, disciplinary or fact-finding body information concerning Mr. Colson.

Sincerely,

LEON JAWORSKI
Special Prosecutor

102. On June 10, 1974 the President's counsel informed the House Judiciary Committee that the President declined to furnish the material called for in the Committee's subpoena of May 30, 1974. In a separate letter of the same date, the President responded to Chairman Rodino's letter of May 30, 1974 for the Committee respecting the refusal of the President expressed in his May 22, 1974 letter to the Committee declining to produce Presidential tapes and diaries called for in the Committee's subpoenas of May 15, 1974.

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THE WHITE HOUSE

WASHINGTON

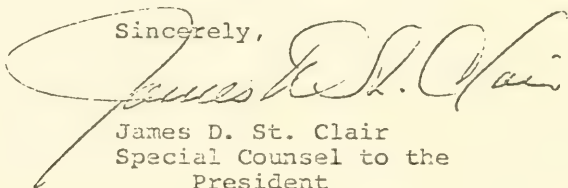
June 10, 1974

Dear Mr. Chairman:

In response to the subpoena of the House of Representatives directed to Richard M. Nixon, President of the United States, dated May 30, 1974, and returnable at 10:00 A.M. June 10, 1974, I am directed by the President to advise you that he must respectfully decline to furnish the material called for therein.

His reasons for this are stated in a separate letter addressed to you, dated June 9, 1974, and delivered to you herewith.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read "James D. St. Clair". The signature is written over the typed name and title.

James D. St. Clair
Special Counsel to the
President

Mr. Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C.

JUNE 10, 1974

Office of the White House Press Secretary

101.2 President Nixon letter

THE WHITE HOUSE

TEXT OF A LETTER FROM THE PRESIDENT
TO PETER W. RODINO, JR.
CHAIRMAN, COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

June 9, 1974

Dear Mr. Chairman:

In your letter of May 30, you describe as "a grave matter" my refusal to comply with the Committee's subpoenas of May 15. You state that "under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment," and add that "Committee members will be free to consider whether your refusals warrant the drawing of adverse inferences concerning the substance of the materials..."

The question of the respective rights and responsibilities of the Executive and Legislative branches is one of the cardinal questions raised by a proceeding such as the one the Committee is now conducting. I believe, therefore, that I should point out certain considerations which I believe are compelling.

First, it is quite clear that this is not a case of "the President conduct(ing) an inquiry into his own impeachment." The Committee is conducting its inquiry; the Committee has had extensive and unprecedented cooperation from the White House. The question at issue is not who conducts the inquiry, but where the line is to be drawn on an apparently endlessly escalating spiral of demands for confidential Presidential tapes and documents. The Committee asserts that it should be the sole judge of Presidential confidentiality. I cannot accept such a doctrine; no President could accept such a doctrine, which has never before been seriously asserted.

What is commonly referred to now as "executive privilege" is part and parcel of the basic doctrine of separation of powers -- the establishment, by the Constitution, of three separate and co-equal branches of Government. While many functions of Government require the concurrence or interaction of two or more branches, each branch historically has been steadfast in maintaining its own independence by turning back attempts of the others, whenever made, to assert an authority to invade, without consent, the privacy of its own deliberations.

Thus each house of the Congress has always maintained that it alone shall decide what should be provided, if anything, and in what form, in response to a judicial subpoena. This standing doctrine was summed up in a resolution adopted by the Senate on March 8, 1962, in connection with subpoenas issued by a Federal court in the trial of James Hoffa, which read: "Resolved, that by the privileges of the Senate of the United States no evidence under the control and in the possession of the Senate

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of the United States can, by the mandate of process of the ordinary courts of justice, be taken from the control or possession, but by its permission...". More recently, in the case of Lt. William Calley, the chairman of the House Armed Services subcommittee refused to make available for the court-martial proceeding testimony that had been given before the subcommittee in executive session -- testimony which Lt. Calley claimed would be exculpatory. In refusing, the subcommittee chairman, Representative Hebert, explained that the Congress is "an independent branch of the Government, separate from but equal to the Executive and Judicial branches," and that accordingly only Congress can direct the disclosure of legislative records.

Equally, the Judicial branch has always held sacrosanct the privacy of judicial deliberations, and has always held that neither of the other branches may invade Judicial privacy or encroach on Judicial independence. In 1953, in refusing to respond to a subpoena from the House Un-American Activities Committee, Justice Tom C. Clark cited the fact that "the independence of the three branches of our Government is the cardinal principle on which our Constitutional system is founded. This complete independence of the judiciary is necessary to the proper administration of justice." In 1971, Chief Justice Burger analogized the confidentiality of the Court to that of the Executive, and said: "No statute gives this Court express power to establish and enforce the utmost security measures for the secrecy of our deliberations and records. Yet I have little doubt as to the inherent power of the Court to protect the confidentiality of its internal operations by whatever judicial means may be required."

These positions of the Courts and the Congress are not lightly taken; they are essential to maintaining the balances among the three branches of Government. Equal firmness by the Executive is no less essential to maintaining that balance.

The general applicability of the basic principle was summed up in 1962 by Senator Stennis, in a ruling upholding President Kennedy's refusal to provide information sought by a Senate subcommittee. Senator Stennis held: "We are now come face to face and are in direct conflict with the established doctrine of separation of powers....I know of no case where the Court has ever made the Senate or the House surrender records from its files, or where the Executive has made the Legislative Branch surrender records from its files -- and I do not think either one of them could. So the rule works three ways. Each is supreme within its field, and each is responsible within its field."

If the institution of an impeachment inquiry against a President were permitted to override all restraints of separation of powers, this would spell the end of the doctrine of separation of powers; it would be an open invitation to future Congresses to use an impeachment inquiry, however frivolously, as a device to assert their own supremacy over the Executive, and to reduce Executive confidentiality to a nullity.

My refusal to comply with further subpoenas with respect to Watergate is based, essentially, on two considerations.

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First, preserving the principle of separation of powers -- and of the Executive as a co-equal branch -- requires that the Executive, no less than the Legislative or Judicial branches, must be immune from unlimited search and seizure by the other co-equal branches.

Second, the voluminous body of materials that the Committee already has -- and which I have voluntarily provided, partly in response to Committee requests and partly in an effort to round out the record -- does give the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions. The way to resolve whatever ambiguities the Committee may feel still exist is not to pursue the chimera of additional evidence from additional tapes, but rather to call live witnesses who can place the existing evidence in perspective, and subject them to cross-examination under oath. Simply multiplying the tapes and transcripts would extend the proceedings interminably, while adding nothing substantial to the evidence the Committee already has.

Once embarked on a process of continually demanding additional tapes whenever those the Committee already has fail to turn up evidence of guilt, there would be no end unless a line were drawn somewhere by someone. Since it is clear that the Committee will not draw such a line, I have done so.

One example should serve to illustrate my point. In issuing its subpoena of May 15, the Committee rested its argument for the necessity of these additional tapes most heavily on the first of the additional conversations subpoenaed. This was a meeting that I held on April 4, 1972, in the Oval Office, with then Attorney General Mitchell and H.R. Haldeman. The Committee insisted that this was necessary because it was the first meeting following the one in Key Biscayne between Mr. Mitchell and his aides, in which, according to testimony, he allegedly approved the intelligence plan that led to the Watergate break-in; and because, according to other testimony, an intelligence plan was mentioned in a briefing paper prepared for Mr. Haldeman for the April 4 meeting. Committee members made clear their belief that the record of this meeting, therefore, would be crucial to a determination of whether the President had advance information of the intelligence activities that included the break-in.

As it happens, there also was testimony that the ITT matter had been discussed at that April 4 meeting, and the Committee therefore also requested the April 4 conversation in connection with its ITT investigation. On June 5, 1974, a complete transcript was provided to the Committee for the purposes of the ITT probe, together with an invitation to verify the transcript against the actual tape. This transcript shows that not a word was spoken in that meeting about intelligence plans, or about anything remotely related to Watergate -- as the Committee can verify.

I cite this instance because it illustrates clearly -- on the basis of material the Committee already has -- the insubstantiality of the claims being made for additional tapes; and the

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fact that a Committee demand for material does not automatically thereby convert the requested material into "evidence."

As for your declaration that an adverse inference could be drawn from my assertion of Executive privilege with regard to these additional materials, such a declaration flies in the face of established law on the assertion of valid claims of privilege. The Supreme Court has pointed out that even allowing comment by a judge or prosecutor on a valid Constitutional claim is "a penalty imposed by courts for exercising a Constitutional privilege," and that "it cuts down on the privilege by making its assertion costly." In its deliberations on the Proposed Federal Rules of Evidence, the House of Representatives -- in its version -- substituted for specific language on the various forms of privilege a blanket rule that these should "be governed by the principles of the Common law as they may be interpreted by the courts of the United States in light of reason and experience....". But as adopted in 1972 by the Supreme Court -- the final arbiter of "the principles of the Common law as...interpreted by the courts," and as codification of those principles -- the Proposed Federal Rules clearly state: "The claim of a privilege, whether in the present proceeding or in a prior occasion, is not the proper subject of comment by judge or counsel. No inference may be drawn therefrom."

Those are legal arguments. The common-sense argument is that a claim of privilege, which is valid under the doctrine of separation of powers and is designed to protect the principle of separation of powers, must be accepted without adverse inference -- or else the privilege itself is undermined, and the separation of powers nullified.

A proceeding such as the present one places a great strain on our Constitutional system, and on the pattern of practice of self-restraint by the three branches that has maintained the balances of that system for nearly two centuries. Whenever one branch attempts to press too hard in intruding on the Constitutional prerogatives of another, that balance is threatened. From the start of these proceedings, I have tried to cooperate as far as I reasonably could in order to avert a Constitutional confrontation. But I am determined to do nothing which, by the precedents it set, would render the Executive branch henceforth and forevermore subservient to the Legislative branch, and would thereby destroy the Constitutional balance. This is the key issue in my insistence that the Executive must remain the final arbiter of demands on its confidentiality, just as the Legislative and Judicial branches must remain the final arbiters of demands on their confidentiality.

Sincerely,

/s/ RICHARD NIXON

The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

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Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

GENERAL COUNSEL
JEROME M. ZEIFMAN
ASSOCIATE GENERAL COUNSEL
GARNER J. CLINE
COUNSEL
HERBERT FUCHS
HERBERT E. HOFFMAN
WILLIAM P. SHATTUCK
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May 30, 1974

The President
The White House
Washington, D. C.

Dear Mr. President:

The Committee on the Judiciary has authorized and directed me to reply to your letter of May 22 in which you decline to produce the tapes of Presidential conversations and Presidential diaries called for in the Committee's subpoenas served on you on May 15, 1974. You also decline to produce any other material dealing with Watergate that may be called for in any further subpoenas that may be issued by the Committee.

The Committee on the Judiciary regards your refusal to comply with its lawful subpoenas as a grave matter. Under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry. These are matters which, under the Constitution, the House has the sole power to determine.

In meeting their constitutional responsibility, Committee members will be free to consider whether your refusals warrant the drawing of adverse inferences concerning the substance of the materials,

The President

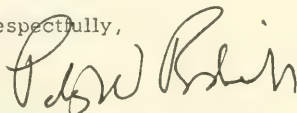
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May 30, 1974

and whether your refusals in and of themselves might constitute a ground for impeachment.

The Committee's decisions on these matters will be contained in the recommendation the Committee will make to the House of Representatives.

Respectfully,

A handwritten signature in dark ink, appearing to read "Peter W. Rodino, Jr.", written in a cursive style.

PETER W. RODINO, JR.
Chairman

THE WHITE HOUSE

WASHINGTON

May 22, 1974

Dear Mr. Chairman:

This letter is in response to two subpoenas of the House of Representatives dated May 15, 1974, one calling for the production of tapes of additional Presidential conversations and the other calling for the production of my daily diary for extended periods of time in 1972 and 1973. Neither subpoena specifies in any way the subject matters into which the Committee seeks to inquire. I can only presume that the material sought must be thought to relate in some unspecified way to what has generally been known as "Watergate."

On April 30, 1974, in response to a subpoena of the House of Representatives dated April 11, 1974, I submitted transcripts not only of all the recorded Presidential conversations that took place that were called for in the subpoena, but also of a number of additional Presidential conversations that had not been subpoenaed. I did this so that the record of my knowledge and actions in the Watergate matter would be fully disclosed, once and for all.

Even while my response to this original subpoena was being prepared, on April 19, 1974, my counsel received a request from the Judiciary Committee's counsel for the production of tapes of more than 140 additional Presidential conversations -- of which 76 were alleged to relate to Watergate -- together with a request for additional Presidential diaries for extended periods of time in 1972 and 1973.

The subpoenas dated May 15 call for the tapes of the first 11 of the conversations that were requested on April 19, and for all of the diaries that were requested on April 19. My

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counsel has informed me that the intention of the Committee is to also issue a series of subpoenas covering all 76 of the conversations requested on April 19 that are thought to relate to Watergate. It is obvious that the subpoenaed ~~clerks~~ are intended to be used to identify even more Presidential conversations, as a basis for yet additional subpoenas.

Thus, it is clear that the continued succession of demands for additional Presidential conversations has become a never-ending process, and that to continue providing these conversations in response to the constantly escalating requests would constitute such a massive invasion into the confidentiality of Presidential conversations that the institution of the Presidency itself would be fatally compromised.

The Committee has the full story of Watergate, in so far as it relates to Presidential knowledge and Presidential actions. Production of these additional conversations would merely prolong the inquiry without yielding significant additional evidence. More fundamentally, continuing ad infinitum the process of yielding up additional conversations in response to an endless series of demands would fatally weaken this office not only in this Administration but for future Presidencies as well.

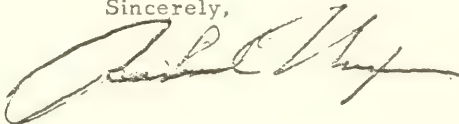
Accordingly, I respectfully decline to produce the tapes of Presidential conversations and Presidential diaries referred to in your request of April 19, 1974, that are called for in part in the subpoenas dated May 15, 1974, and those allegedly dealing with Watergate that may be called for in such further subpoenas as may hereafter be issued.

However, I again remind you that if the Committee desires further information from me about any of these conversations

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or other matters related to its inquiry, I stand ready to answer, under oath, pertinent written interrogatories, and to be interviewed under oath by you and the ranking Minority Member at the White House.

Sincerely,



The Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C.

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